

MAR 2 2000
Missouri Public Service Commission

Telecommunications company successfully complies with the surety requirement for a period of three (3) consecutive years.

TX-2000-160
Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission
Chapter 32—Telecommunications Service

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.040, RSMo 1994 and 386.250, 392.200, 392.450 and 392.451, RSMo Supp. 1999, the commission adopts a rule as follows:

4 CSR 240-32.120 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2344-2346). 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 public hearing was held on November 4, 1999. Written comments were submitted.

COMMENT: Written comments, as well as testimony at the hearing, strongly urged the commission to limit application of this rule to companies that are reselling the services of a carrier-of-last-resort. The comments pointed out that companies that are providing services through unbundled network elements or through their own facilities are less likely to suddenly go out of business and thus are less likely to trigger the need for a snap-back procedure. The comments also pointed out many technical and legal barriers to imposing the proposed snap-back procedures when service is provided through unbundled network elements or separate facilities.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comments. The rule has been modified so that it will apply only to resellers of services. It will not apply to the provision of service to end-user customers through unbundled network elements or through separate facilities. Section (5) of the proposed rule, which applied only to facilities based providers has been eliminated in its entirety.

COMMENT: The staff of the Public Service Commission suggested that a provision be added to account for a situation where there may be more than one carrier-of-last-resort in a given service area.

RESPONSE AND EXPLANATION OF CHANGE: The concerns expressed by the staff are addressed in new section (4) that provides that if there is more than one carrier-of-last-resort in a service area, the customers of the company that has ceased operation will be transferred to the carrier-of-last-resort whose services are being resold.

COMMENT: One comment suggests that the rule provide that no company may cease serving customers until the commission has approved its plan to abandon service.

RESPONSE: The comment seemingly would have the commission expand the reach of Section 392.460, RSMo 1994 to include competitive local exchange companies. The commission has neither the power, nor the inclination to do so.

COMMENT: One comment suggests that the carrier-of-last-resort should be required to provide at least transitional service to all customers of the company that is ceasing to provide service. The comment asks that no exception be made for when the carrier-of-last-

resort's tariff would not require service to that customer. Another comment takes the opposite position and suggests that the rule should clearly indicate that the carrier-of-last-resort should not be required to provide even interim service to a customer that it would not otherwise serve.

RESPONSE AND EXPLANATION OF CHANGE: The exception in question would allow the carrier-of-last-resort to not provide transition service to customers whom the carrier-of-last-resort would not serve under its own tariffs, most often because of unpaid bills. The purpose of this regulation is to ensure that Missouri's phone customers do not suddenly lose basic local phone service because of the failure of their basic local phone service provider. In order to fulfill that purpose, the carrier-of-last-resort must be required to provide transitional services to all of the customers who would otherwise suddenly lose service. This requirement may impose some additional costs on the carrier-of-last-resort because of unpaid bills. However, those additional costs should not be unduly burdensome. A witness who appeared at the hearing on behalf of Southwestern Bell Telephone Company testified that Southwestern Bell has taken back customers of failed basic local providers in other states. The witness indicated that Southwestern Bell will take back all customers for a transition period, even if those customers owe money to Southwestern Bell. Section (3) has been modified to specifically require the carrier-of-last-resort to provide transitional service to all customers of the company that ceases service.

COMMENT: One comment suggests that if the customer has not chosen a new carrier at the end of the thirty-day interim period, the carrier-of-last-resort be required to continue to provide service to the customer.

RESPONSE AND EXPLANATION OF CHANGE: The commission disagrees with the comment. Requiring the carrier-of-last-resort to continue to provide service to a customer after the end of the interim period would be unfair to the carrier-of-last-resort if it does wish to provide services to that customer if, for example, that customer is a poor payment risk. Paradoxically, under other circumstances, it might be unfair to the carrier-of-last-resort's competitors to allow the carrier-of-last-resort to inherit the good customers of the company that ceases providing service unless those customers affirmatively choose to engage the services of the carrier-of-last-resort. A provision has been added to section (3) to clarify that the carrier-of-last-resort is under no obligation to provide service to a customer beyond the thirty-day interim period.

COMMENT: One comment suggests that if the carrier-of-last-resort selects an intraLATA and/or interLATA carrier for an interim customer, the carrier-of-last-resort be required to notify the customer of its right to make a PIC change without charge to the customer's preferred carrier.

RESPONSE: The commission will decline to impose this additional cost on the carrier-of-last-resort.

COMMENT: One comment suggests that the rule should provide that the customer shall not be charged any installation or service fee for the interim transition back to the carrier-of-last-resort. The comment suggests that the carrier-of-last-resort should bill those costs to the company that is ceasing to provide service and thereby necessitating the snap-back. Another comment suggests that the carrier-of-last-resort should not be held responsible for the cost of transitioning the customer and that the rule should explicitly state that the customer shall be responsible for all charges relating to the snap-back procedure.

RESPONSE: The carrier-of-last-resort and the customer are both innocent victims in a snap-back situation. There is no reason to impose the cost of the snap-back procedure on the carrier-of-last-resort. When a customer chooses to accept the benefits of obtaining basic local phone service from a competitive company, they

must also accept the responsibility of considering the financial stability of that competitive company. If the company with which they choose to deal is not able to provide the agreed upon service, it is the customer who must bear the risk. The commission will not establish any specific fees or charges in this rule. However, if a carrier-of-last-resort wishes to propose such fees or charges in its tariffs, the commission will consider those proposals through the tariff making process.

COMMENT: Several comments suggest that the company that is ceasing operations should be responsible for informing its own customers of that situation. That obligation should not be imposed upon the carrier-of-last-resort.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment. A provision has been added to section (2) that will require the company that is ceasing operations to provide such notice. Section (5) still requires the carrier-of-last-resort to give notice to the customer after the snap-back has occurred.

COMMENT: Several comments expressed concern about section (6) of the proposed rule. That section would have required the carrier-of-last-resort to provide detailed information about the snap-back to the commission within five days after the interim transfer of customers. The comments indicated that this requirement would be a great burden on the carriers-of-last-resort.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and section (6) of the proposed rule has been eliminated.

COMMENT: One comment suggests that a provision should be added to the rule to protect carriers-of-last-resort from allegations of slamming if they are in good faith complying with this snap-back rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and has added a new section (6) to address this situation.

COMMENT: One comment expresses concern that this rule would require carriers-of-last-resort to incur additional uncollectable expenses because customers who have been snapped-back might not feel an obligation to pay for services that they did not authorize.

RESPONSE: The commission is aware of this concern and has attempted to limit the financial impact that this rule will have on the carriers-of-last-resort.

COMMENT: One comment suggests that a carrier-of-last-resort should be reimbursed for its additional costs from the snap-back rule through the universal service fund.

RESPONSE: The commission does not believe that this would be an appropriate use for the universal service fund.

COMMENT: One comment suggests that section (1) of the rule is overly broad in that it would seem to make the snap-back rule apply where the company "otherwise terminates service to the end-user customer for any reason other than cause." The comment suggests that this language would make the rule apply if a customer voluntarily leaves the company and obtains service from the carrier-of-last-resort or another competitive company.

RESPONSE: The comment overlooks the rest of section (1) which adds the phrase "as provided for in its tariffs and approved by the commission." Normal business situations, such as a customer choosing to change carriers will be provided for in a company's tariffs and thus will not trigger application of the snap-back rule.

COMMENT: One comment indicates that a carrier-of-last-resort would not be able to give a customer specific rate information in its initial notification letter following a snap-back. Because of the

need for quick notice to the affected customers, that initial letter would need to be generic. The comment suggests the specific rate information instead be included with the customer's initial bill.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and new section (5) has been modified to address that concern. No other comments were received.

4 CSR 240-32.120 Snap-Back Requirements for Basic Local Telecommunications Companies

(1) To ensure uninterrupted service to basic local telecommunications service customers, a basic local telecommunications company reselling the services of a carrier-of-last-resort shall provide an immediate and orderly transition of its resale customers to a carrier-of-last-resort in the event the company ceases operation or otherwise terminates service to the end-user customer for any reason other than cause as provided for in its tariffs and approved by the commission.

(2) If a provider of basic local telecommunications service, serving a customer through resale of a carrier-of-last-resort's services, ceases service, it shall immediately, but in no event later than thirty (30) days prior to its last day of service, provide the carrier-of-last-resort all relevant information to ensure that the end-user customer will not experience a service outage. The provider of basic local telecommunications service shall also send a notice to its end-users advising them of its intention to cease doing business and that such end-users must choose another basic local service provider. The notice shall further indicate that failure to choose another provider may result in the carrier-of-last-resort providing service during a thirty (30)-day interim period until such a choice is made and that failure to choose another provider within thirty (30) days after the transition shall result in a loss of service. The customer's intraLATA and/or interLATA carrier of choice will be continued if available. If it is not available, the carrier-of-last-resort will provide access to any carrier it selects until the customer notifies the carrier-of-last-resort in writing of a new carrier selection.

(3) The carrier-of-last-resort will immediately accept the resale customers of a provider of basic local telecommunications service, providing service through resale, that ceases operation or otherwise terminates service to the end-user customer for any reason other than cause as provided for in its tariffs and approved by the commission. The carrier-of-last-resort shall provide the end-user identical or equivalent service during a thirty (30)-day interim period, or until the end-user chooses another provider. The rates and terms for the service supplied will be provided according to the carrier-of-last-resort's approved tariff, except that the payment or credit history of the customer shall not permit the carrier-of-last-resort to refuse to provide service during the transition period. Within thirty days after transfer of the customer, the customer must make an affirmative choice to stay with the new carrier or select another carrier. The carrier-of-last-resort is not obligated to provide service to the customer beyond the thirty (30)-day interim period. If the customer does not choose a new carrier, the carrier-of-last-resort may immediately terminate service to the customer notwithstanding any other requirements in its tariffs.

(4) If there is more than one carrier-of-last-resort in a service territory, customers of the basic local telecommunications company that has ceased operation shall be transferred to the carrier-of-last-resort whose services are being resold.

(5) The carrier-of-last-resort shall notify the customer of the temporary change of service provider, the applicable rates that will be charged the customer, and that the customer has thirty (30) days to make a choice of a preferred service provider. Such notice shall be

given no later than the carrier-of-last-resort's initial bill to the affected customer. The information regarding rates may be provided in such bill. The notice shall also provide that within thirty (30) days after transfer of a customer, the customer must make an affirmative choice to stay with the new carrier or select another carrier. If no choice is made, the current carrier may terminate service, notwithstanding any additional notice requirements contained in its tariffs.

(6) No good faith effort to comply with this rule shall be grounds for a claim of unwanted or unlawful provision of service, i.e. slamming or cramming, provided that the carrier-of-last-resort shall convert the end-user in an orderly fashion to their carrier of choice when an order is received from the end-user's provider of choice.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 144.270, RSMo 1994, the director adopts a rule as follows:

12 CSR 10-110.013 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 1, 1999 (24 MoReg 2632-2634) as 12 CSR 10-111.013. The subsections of the proposed rule with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS AND EXPLANATION OF CHANGE: The department received two letters of comment on this proposed rule. The department is in the process of rewriting the State Sales/Use Tax Regulations. As a part of the rewriting process, the chapter numbers and titles will be changed. This request is based on public comments asking the department to make the Sales/Use Tax Regulations easier to locate and understand.

COMMENT: One commenter suggested adding more specifics regarding dental work referred to in (3)(C).

RESPONSE AND EXPLANATION OF CHANGE: Incorporated.

COMMENT: One commenter suggested changes in (4)(A) to allow purchases by an agent of a disabled person.

RESPONSE AND EXPLANATION OF CHANGE: Incorporated.

COMMENT: One commenter suggested not requiring any type of purchaser identification for items sold to or for disabled persons.

RESPONSE: The department disagrees with the comment and did not change the proposed regulation.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

12 CSR 10-110.013 Drugs and Medical Equipment

(3) Basic Application of Tax.

(C) Also exempt from sales tax are items specified in section 1862(A)(12) of the Social Security Act of 1965. Exempt items included in this class are those used in connection with the treatment, removal or replacement of teeth or structures directly sup-

porting teeth. Dental equipment or supplies are not exempt. The exempt items include:

1. Dentures
2. Inlays
3. Bridge work
4. Fillings
5. Crowns
6. Braces, or
7. Artificial dentistry and dental reconstructions, which are made, manufactured or fabricated from molds or impressions made by dentists of the mouths of their particular patients and sold to dentists for insertion in the patient's mouth as the direct support of, substitution for, or part of the patient's teeth.

(4) Examples.

(A) A retailer sells an over-the-counter drug to an individual claiming a disability. The sale is exempt if the retailer obtains from the purchaser or their agent a statement similar to the following:

Purchases of over-the-counter drugs by individuals with disabilities are exempt from sales tax. IT IS UNLAWFUL TO FRAUDULENTLY CLAIM AN EXEMPTION. I CERTIFY THAT I HAVE A DISABILITY AND AM ENTITLED TO CLAIM THIS EXEMPTION OR I AM CLAIMING THIS EXEMPTION ON BEHALF OF A PERSON OR PERSONS WITH A DISABILITY.

Type of Purchase _____ Amount _____
Type of ID _____
ID Number _____
Name (print) _____
Signature _____

**Title 12—DEPARTMENT OF REVENUE
Division 60—Motor Vehicle Commission
Chapter 1—General Rules**

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 301.553, RSMo Supp. 1999, the director rescinds a rule as follows:

12 CSR 60-1.010 Definitions is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on November 15, 1999 (24 MoReg 2702). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE
Division 60—Motor Vehicle Commission
Chapter 1—General Rules**

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 301.553, RSMo Supp. 1999, the director rescinds a rule as follows:

12 CSR 60-1.020 Missouri Motor Vehicle Commission is rescinded.