

manner and the check has been dishonored, except when the dishonor is due to bank error.

**Missouri Public
Service Commission**

TX-2000-008 167

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 240—Public Service Commission
Chapter 33—Service and Billing Practices
for Telephone Utilities**

ORDER OF RULEMAKING

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

4 CSR 240-33.080 Disputes is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2367). 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: This rescission was proposed in conjunction with a replacement proposed rule. The comments received were directed to the proposed rule.

**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, RSMo 1994, and 386.250 and 392.200, RSMo Supp. 1999, the commission adopts a rule as follows:

4 CSR 240-33.080 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 2367-2370). 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: Written comments were received from four separate sources. Oral comments from one telecommunications company were received at the public hearing for this rule held on November 15, 1999.

COMMENT: One written comment was received from a telecommunications company that objected to rule 33.080 as proposed. The commenter specifically stated that section (1) should be revised to "remove [the] opportunity for customers to game the system and delay payment past the due date." The commenter suggested that the rule be redrafted to anticipate frivolous complaints. A representative for the same company made remarks at the public hearing on the rule. The commenter at the hearing stated that it was more appropriate for a customer to be required to register his or her dispute on or by the delinquent date rather than up to 24 hours in advance of disconnection. The company representative

stated that the company's concern was that the undisputed portion of the bill be paid by the due date.

RESPONSE AND EXPLANATION OF CHANGE: The rule currently in effect allows the customer to register a dispute anytime prior to the delinquent date of the charges. The Commission rules govern the length of time between the due date of a payment and the delinquent date. The company points out that an overlapping dispute period and disconnection period could be confusing to both the customer and the company and could cause inadvertent disconnection. The customer may register a dispute before the due date of the payment or at anytime before the delinquent date. The Commission finds that the proposed rule should be amended to require customers to register disputes prior to the delinquent date of payment.

COMMENT: One written comment was received from a telecommunications company which objected to section (1) of the proposed rule. The commenter stated that the rule currently in effect gives adequate protection to customers by allowing them to register a dispute before the payment delinquent date. The commenter suggested that unscrupulous customers may feign disputes in order to extend service. In addition, the commenter stated that the overlap between disconnection activities and dispute activities could lead to inadvertent disconnection of some customers.

RESPONSE AND EXPLANATION OF CHANGE: While the Commission does not necessarily agree that customers are registering frivolous complaints in order to maintain service, the Commission does agree that it is reasonable to require customers to register a complaint with the company prior to the delinquent date. The Commission determines that proposed section (1) should be amended.

COMMENT: One written comment to section (3) was received. The commenter objected to the customer being subject to discontinuance of service due to failure to cooperate in resolving the dispute. The commenter suggested that a more reasonable sanction would be to "provide that failure to cooperate 'may result in the rejection of the disputed claim' or that it may result 'in the resolution of the dispute against the customer.'"

RESPONSE: The customer has many rights guaranteed to him or her under the rules of the Commission. The procedures for filing a complaint with the Commission are set out in the Commission's rules. The Commission finds that a company cannot reasonably resolve a dispute without the cooperation of the customer and therefore, the company needs some guarantee that the customer will be required to at least take some reasonable measures toward resolution of the dispute. The Commission finds that the requirements in the rule and the sanctions provided are reasonable. Therefore, the Commission finds that no amendment to this rule is necessary.

COMMENT: One written comment suggested that the second sentence in section (4) be deleted because it was unnecessary. The commenter, a telecommunications company, stated that "[t]he dispute rarely centers on amount but rather on whether a charge is owed."

RESPONSE: It has been the Commission's experience in handling the complaints of customers, that some customers do dispute the amount of the charge as well as the charge itself. Even the commenter implies that the amount may be in dispute on "rare" occasions. The Commission finds that the second sentence of the rule will provide a procedure for those disputes over amount and therefore, no amendment to section (4) is necessary as a result of this comment.

COMMENT: One written comment to proposed rule 33.070 was also filed in this proposed rule and relates directly to it. In that

comment, the issue of discontinuance for nonpayment of charges which are subject to a dispute is raised.

RESPONSE AND EXPLANATION OF CHANGE: The Commission determines after reviewing the proposed rules and the comments that the prohibition against discontinuance of service for nonpayment of charges which are the subject of a dispute has been inadvertently removed from proposed Chapter 33. The prohibition is implied, and the comments to the proposed rule assume that it exists, but no specific prohibition is included in the rules. Therefore, the Commission will amend section (4) and (5) to explicitly state this prohibition.

COMMENT: One written comment was received which suggested that section (6) be amended. The commenter suggested that in order to have consistent time frames in this rule, "4 working days" should be modified to "5 business days".

RESPONSE: The Commission interprets this comment to suggest that the term "working days" in section (6) be amended to read "business days." The commenter made no statement as to why five days should be required instead of four days. The Commission finds that the term "business days" is not used elsewhere in this rule and therefore, is not inconsistent with any other provision of this rule. The Commission determines that no amendment to this proposed rule is necessary as a result of this comment.

COMMENT: One written comment suggested that interest should be included on any amount refunded to the customer.

RESPONSE: The Commission has insufficient information regarding the amount of charges that are refunded to customers, the length of time those amounts have been held by the company, or the frequency with which this occurs. The Commission finds that making such a requirement would not be reasonable without proposing this as a separate rulemaking proceeding where comments from the general public and the industry can be received and the fiscal impact can be studied. Therefore, the Commission determines that no amendment to this rule is necessary as a result of this comment.

COMMENT: One comment in support of section (9) was received from a telecommunications company. The commenter stated that section (9) "will increase efficiency and streamline complaint procedures."

RESPONSE: The Commission finds that no amendment to this rule is necessary as a result of this comment.

COMMENT: One written comment suggested that section (9) be clarified by adding the phrase, "After the resolution of the customer complaint," to the beginning of the section.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds that this suggestion would clarify the intent of the section. Therefore, the Commission will amend section (9) as suggested.

COMMENT: One general written comment in support of the proposed rule was received. The commenter stated that section (5) was consistent with other Commission rules found in 4 CSR 240-13.045.

RESPONSE: The Commission finds that that no amendment to this rule is necessary as a result of this comment.

COMMENT: One general written comment was received which objected to the rule because the rule applies only to residential customers and does not extend to business customers. The commenter suggested that a new provision be added to the rule that would require the companies to keep records of consumer complaints and reports of billing errors. The commenter recommended that the rule require those records to be reported to the Commission on a quarterly basis. The commenter also objected to "the waiver of the right to continuance of service as a sanction for nonpayment of the undisputed amount."

RESPONSE: The Commission finds that this rule should not be applied to both residential customers and to business customers. The Commission acknowledges that not every business customer has the resources or bargaining power of a large business. However, the Commission finds that applying this rule to business customers could result in a reduction in competitive companies' abilities to negotiate contracts.

The Commission's rules require that a company keep track of billing records for customers. In addition, the Commission has statutory authority to investigate companies and to audit records of the companies. The Commission's rules also provide complaint procedures for customers. The Commission finds that there is not sufficient information to add additional record keeping requirements for the companies at this time. The Commission determines that this requirement would be more appropriate as a separate rulemaking where comments from the public and the industry can be received and the fiscal impact of the rule can be studied.

Finally, some of the statements received from this commenter were unclear. However, the Commission finds that it is reasonable for a customer to be subject to discontinuance of service for nonpayment of undisputed charges. Therefore, Commission finds that that no amendment to this rule is necessary as a result of this comment.

4 CSR 240-33.080 Disputes by Residential Customers

(1) A customer shall advise a telecommunications company that all or part of a charge is in dispute by written notice, in person or by a telephone message directed to the telecommunications company during normal business hours. A dispute must be registered with the utility prior to the delinquent date of the charge for a customer to avoid discontinuance of service as provided by these rules.

(4) If a customer disputes a charge, the customer shall pay an amount to the telecommunications company equal to that part of the total bill not in dispute. The amount not in dispute shall be mutually determined by the parties. The parties shall consider the customer's prior usage, the nature of the dispute and any other pertinent factors in determining the amount not in dispute. The telecommunications company shall not discontinue service to a customer for nonpayment of charges in dispute while that dispute is pending.

(5) If the parties are unable to mutually determine the amount not in dispute, the customer shall pay to the telecommunications company, at the company's option, an amount not to exceed fifty percent (50%) of the charge in dispute or an amount based on usage during a like period under similar conditions which shall represent the amount not in dispute. The telecommunications company shall not discontinue service to a customer for nonpayment of charges in dispute while that dispute is pending.

(9) After resolution of the customer complaint, a telecommunications company may treat a customer complaint or dispute involving the same question or issue based upon the same facts as already determined and is not required to comply with these rules more than once prior to discontinuance of service.

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