

**MATT BLUNT**  
**Secretary of State**  
**Administrative Rules Division**  
**RULE TRANSMITTAL**

**COPY**

\*Administrative Rules Stamp

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JUL 1 2000  
SECRETARY OF STATE  
ADMINISTRATIVE RULES

A "SEPARATE" rule transmittal sheet must be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-36.010  
Diskette File Name Final Rule 240-36.010  
Name of Person to call with questions about this rule:  
Content Nathan Williams Phone 573-751-8702 FAX 573-751-9285  
Data Entry Tammy Vieth Phone 573-751-8377 FAX 573-751-9285  
Email Address nathan.williams@psc.mo.gov  
Interagency Mailing Address Governor Office Building, 200 Madison St., 8th Floor, Jefferson City, MO  
Statutory Authority 386.410 Current RSMo date 2000  
Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo 2000, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Incorporation by reference materials, if any |
| <input checked="" type="checkbox"/> Cover letter               | <input type="checkbox"/> Authority with history of the rule           |
| <input type="checkbox"/> Affidavit                             | <input type="checkbox"/> Public cost                                  |
| <input type="checkbox"/> Forms, number of pages _____          | <input type="checkbox"/> Private cost                                 |
| <input type="checkbox"/> Fiscal notes                          | <input type="checkbox"/> Hearing and comment period                   |

C. RULEMAKING ACTION TO BE TAKEN

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

D. SPECIFIC INSTRUCTIONS: Please indicate any special instructions (e.g., publication date preference, identify material to be incorporated by reference, or forms included herein).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-36.010

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. This is not a reprinting of your order, but an explanation of what sections, subsections, etc. have been changed since the original proposed rule was filed.

(Start text here. If text continues to a third page, insert a continuous section break and, in section 3, delete the footer text. DO NOT delete the header, however.)

Section (5) defining "arbitration" is revised to clarify that the commission is the decision-maker, not the arbitrator.

Section (6) defining "petition" is revised to specify that relief is sought under Section 252 of the Telecommunications Act of 1996.

Section (8) defining "arbitrated agreement" is revised to reflect that the commission is the decision-maker.

NOTE: ALL changes MUST be specified here in order for those changes to be made in the rule as published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.



**Commissioners**

**STEVE GAW**  
Chair

**CONNIE MURRAY**

**ROBERT M. CLAYTON III**

**JEFF DAVIS**

**LINWARD "LIN" APPLING**

***Missouri Public Service Commission***

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573-751-1847 (Fax Number)  
<http://www.psc.mo.gov>

**ROBERT J. QUINN, JR.**  
Executive Director

**WESS A. HENDERSON**  
Director, Utility Operations

**ROBERT SCHALLENBERG**  
Director, Utility Services

**DALE HARDY ROBERTS**  
Secretary/Chief Regulatory Law Judge

**DANA K. JOYCE**  
General Counsel

June 10, 2004

Hon. Matt Blunt  
Secretary of State  
Administrative Rules Division  
600 West Main Street  
Jefferson City, MO 65101

Dear Secretary Blunt,

Re: Final Order of Rulemaking 4 CSR 240-36.010

**CERTIFICATION OF ADMINISTRATIVE RULE**

I hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission for filing on this 10<sup>th</sup> day of June 2004.

Statutory Authority: Section 386.410

If there are any questions, please contact:

Nathan Williams  
Senior Counsel  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-8702, FAX (573) 751-9285  
[nathan.williams@psc.mo.gov](mailto:nathan.williams@psc.mo.gov)

BY THE COMMISSION

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

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 240—Public Service Commission  
Chapter 36—Alternative Dispute Resolution Procedural  
Rules Governing Filings Made Pursuant to the  
Telecommunications Act of 1996**

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SECRETARY OF STATE  
ADMINISTRATIVE RULES

**ORDER OF RULEMAKING**

By the authority vested in the Public Service Commission under section 386.410 RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-36.010 Definitions is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 2, 2004 (29 MoReg 197). 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:** A public hearing on this and associated proposed rules was held March 12, 2004, and the public comment period ended March 5, 2004. At the public hearing, Nathan Williams, Senior Counsel in General Counsel's Office of the Public Service Commission of Missouri, and Natelle Dietrich, Regulatory Economist III of the Public Service Commission of Missouri provided oral responses to written comments. In addition, orally at the public hearing, Mike Dandino provided comments for the Office of the Public Counsel; Mimi McDonald, Senior Counsel for Southwestern Bell Telephone, LP, provided comments for Southwestern Bell Telephone, LP; Carl Lumley of Curtis, Oetting, Heinz, Garrett & O'Keefe, P.C., provided comments for MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc.; Larry Dority of Fisher and Dority, P.C., provided comments for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; and Lisa Chase of Andereck, Evans, Milne, Peace and Johnson, LLP, provided comments for Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company.

The staff of the Public Service Commission of Missouri, Southwestern Bell Telephone, L.P., Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company, MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. and Sprint filed written comments.

**COMMENT:** Sprint suggests revising section (7) of the rule to append the language "or any other date as mutually agreed upon by both parties in writing" to that section.

RESPONSE: The definition of “request for negotiation” of section (7) is tied to proposed rule 4 CSR 240-36.040(2) which states the dates within which a petition for arbitration may be filed with the commission. The dates found in 4 CSR 240-36.040(2) are established by section 252(b)(1) of the Telecommunications Act of 1996. The parties may seek a waiver of the rule. No changes have been made to the rule as a result of this comment.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. propose to revise section (5) to “Arbitration means the submission of a dispute to the commission for resolution with the assistance of a third party neutral” because the commission will make the final decision. They propose modifying section (6) to specify that the relief sought is under section 252 of the Act, not just the Act. They propose that, for consistency with other proposed rules, section (8) be modified to: “Arbitrated agreement means the entire agreement filed by the parties in conformity with the arbitrator’s report as approved or modified by the commission.”

RESPONSE AND EXPLANATION OF CHANGE: Revision of sections (5) and (8) is warranted to clarify that it is the commission that ultimately makes the decision, not the arbitrator. Further, because it is the purpose of this and the accompanying proposed chapter 36 rules to implement the provisions of section 252 of the Telecommunications Act of 1996, the proposal to modify section (6) to specify section 252 of the Act should be adopted. Sections (5), (6) and (8) of the rule will be changed.

#### **4 CSR 240-36.010 Definitions**

(5) Arbitration means the submission of a dispute to the commission for resolution by a process that will employ a neutral arbitrator who will facilitate resolution of the disputed issues through mark-up conferences and limited evidentiary hearings, and who will prepare a final report for acceptance, modification or rejection by the commission.

(6) Petition means an application to the commission for relief under section 252 of the Act.

(8) Arbitrated agreement means the entire agreement filed by the parties in conformity with the commission’s order approving, rejecting or modifying the arbitrator’s final report, in whole or in part.

**MEMORANDUM**

**TO:** Dale Hardy Roberts, Secretary

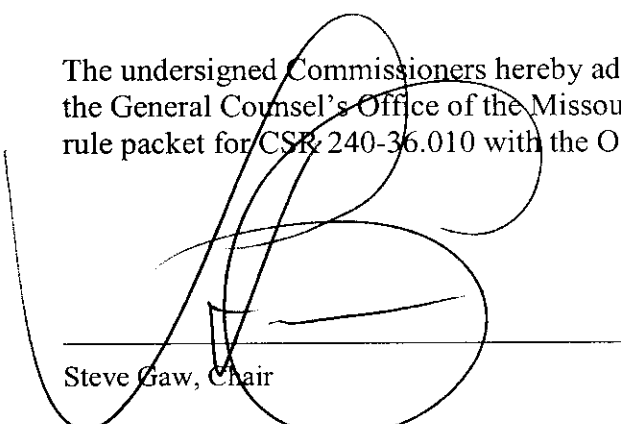
**THROUGH:** Dan Joyce

**FROM:** Nathan Williams


**DATE:** June 8, 2004

**SUBJECT:** APPROVAL OF FINAL RULE 4 CSR 240-36.010 AND  
AUTHORIZATION TO FILE ORDER ADOPTING FINAL RULE  
4 CSR 240-36.010 WITH THE OFFICE OF THE SECRETARY OF  
STATE

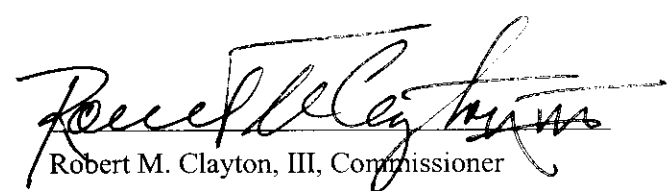
The undersigned Commissioners hereby adopt final rule 4 CSR 240-36.010 and authorize the General Counsel's Office of the Missouri Public Service Commission to file the final rule packet for CSR 240-36.010 with the Office of the Secretary of State.



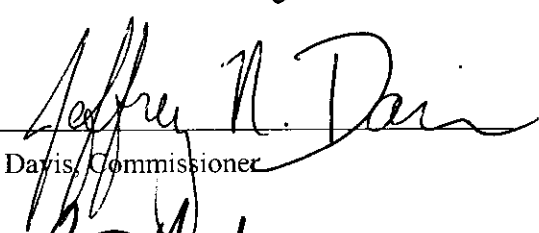
\_\_\_\_\_  
Steve Gaw, Chair




\_\_\_\_\_  
Connie Murray, Commissioner



\_\_\_\_\_  
Robert M. Clayton, III, Commissioner



\_\_\_\_\_  
Jeff Davis, Commissioner



\_\_\_\_\_  
Linward "Lin" Appling, Commissioner