

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Proposed Amendments to the Commission's Ex Parte and Extra-Record Communications Rule	File No. AX-2017-0128
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**COMMENTS OF THE MISSOURI CABLE TELECOMMUNICATIONS
ASSOCIATION**

Comes now the Missouri Cable Telecommunications Association (the "MCTA") and submits these Comments in response to the publication in the Missouri Register of proposed revisions to the Missouri Public Service Commission's (the "Commission") ex parte and extra-record rule. While largely supportive of the proposed revisions, the MCTA is concerned with one proposed revision that would exclude the reporting of certain oral communications about regulated issues.

I. THE COMMISSION SHOULD PRESERVE THE REQUIREMENT TO DISCLOSE DISCUSSIONS OF GENERAL REGULATORY POLICY AND THE OCCURRENCE OF NON-WRITTEN COMMUNICATIONS, WITHOUT REGARD TO WHETHER A CASE IS CONTESTED OR NOTICED

The existing definition of "extra-record communication" potentially includes communications regarding "general regulatory policy." As defined by the existing rules, "general regulatory policy" includes the merits of an administrative rule, a pending rulemaking, or legislation.¹ Existing Rule 240-4.020(8) requires the disclosure of all extra-record

¹ 4 CSR 240-4.020(1)(J) defines "general regulatory policy" as:

Any topic that is not specific to a single entity regulated by the commission and such topic is not reasonably believed by any person who is a party to the communication to be a subject within a contested case or anticipated contested case of which the person or such person's principal is or will be a party. Any communication regarding the merits of an administrative rule, whether a concept or

communications that include discussion of general regulatory policy.² Because the proposed rule changes would eliminate any definition of “general regulatory policy”, while expressly exempting discussions of general regulatory policy from the definition of extra-record communication, such discussions no longer would be reported. The MCTA maintains that the disclosure of such information remains useful to the public, parties and the regulated industry.

The MCTA also is concerned that the Commission proposes to limit the application of the rule against “ex parte” and “extra-record” communications to discussions of “substantive issues likely to be in the [pending or noticed contested] case.” The occurrence of oral communications between Commissioners or technical advisory staff and a regulated entity concerning regulatory issues should be disclosed to prevent the potential for and the appearance of unfair dealing. The disclosure requirement is particularly important given the proposed repeal of the existing rule that requires a party to an oral extra-record communication to terminate the communication immediately when a contested case or anticipated contested case is pending and no advance notice of the communication has been filed, and where the public counsel is not afforded an opportunity to attend.³ Moreover, aside from public trust concerns, disclosing communications concerning

a pending rulemaking, or legislation, whether a concept or a pending piece of legislation, shall at all times be considered a communication regarding a general regulatory policy allowed under section 386.210.4, RSMo.

² Rule 240-4.020(8) states:

Any communication, other than public statements at a public event or de minimis or immaterial communications, between a commissioner or technical advisory staff and any regulated entity regarding regulatory issues, including but not limited to issues of general regulatory policy under subsection 386.210.4, RSMo, if not otherwise disclosed pursuant to this rule, shall be disclosed in the following manner

³ Current Rule 240-4.020(8)(B)2.B states:

Inadvertent communication, or any communication which becomes subject to this subparagraph, shall be terminated immediately, and a notice of extra-record communication shall be filed by the person initiating the communication in accordance with section (4) of this rule. 4 CSR 240-4.020(8)(B)(2)(B).

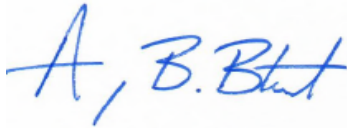
regulated activities allows similarly-situated regulated entities to obtain notice without the need for formal procedures to obtain such information.

CONCLUSION

The MCTA appreciates the opportunity to participate in this proceeding and the Commission's efforts to simplify and promote consistent application of the Commission's ex parte and extra-record communication rules. While the MCTA is largely supportive of the proposed revisions, the MCTA cautions the Commission to be mindful not to repeal so much of the rules that the public interest in transparency is adversely affected.

Respectfully submitted this 2nd day of February, 2017.

MISSOURI CABLE TELECOMMUNICATIONS
ASSOCIATION

A handwritten signature in blue ink, appearing to read "A. B. Blunt". The signature is stylized with a large, looped "A" and a cursive "Blunt".

Andrew B. Blunt
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