

COPY

MATT BLUNT
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

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SECRETARY OF STATE
ADMINISTRATIVE RULES

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

A. Rule Number 4 CSR 240-33.060
Diskette File Name Final Rule 33.060
Name of Person to call with questions about this rule:
Content David Meyer Phone 573-751-8706 FAX 573-751-9285
Data Entry Tammy Vieth Phone 573-751-8377 FAX 573-751-9285
Email Address david.meyer@psc.mo.gov
Interagency Mailing Address Governor Office Building, 200 Madison St., 8th Floor, Jefferson City, MO
Statutory Authority 386.040, 386.250 and 392.200 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 33.060

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.)

4 CSR 240-33.060, Sections one (1), three (3), four (4), five (5), six (6) and seven (7) have been modified.

In Section one (1), the word “the” has been replaced with “each” and the word “inquiries” has been replaced with the word “disputes”.

In Section three (3), the words “verbal request, by” have been inserted after the sixth word of the sentence, and “direct-dialed (i.e. 1+ dialed)” have been inserted in front of the words “900 numbers”. Also, the last six words, “at no charge to that customer” have been deleted.

In Section four (4), the words “verbal request, by” have been inserted after the sixth word of the sentence, and “direct-dialed (i.e. 1+ dialed)” have been inserted in front of the words “900 numbers”. Also, the last six words, “at no charge to that customer” have been deleted. The words “inmates from” have been inserted before the words “state correctional facilities”. The words “where technically feasible” have been added at the end of the sentence. An additional sentence has also been added at the end addressing restriction applicability.

In Section five (5), the words “verbal request, by” have been inserted after the sixth word of the sentence, and the words “where technically feasible” have been added at the end of the sentence.

In Section six (6), the words “verbal request, by” have been inserted after the sixth word of the first sentence, and the words “or 101-XXXX” were inserted before the words “dialing pattern” towards the end of that sentence.

In Section seven (7), an additional clause was added at the end of the first sentence addressing how customer notification may take place. The majority of the words, though not all, in the last sentence were deleted and replaced with different words.

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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DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

July 6, 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 Rule 4 CSR 240-33.060
Residential Customer Inquiries.

CERTIFICATION OF ADMINISTRATIVE RULE

I hereby certify that the attached is an accurate and complete copy of the proposed amendment lawfully submitted by the Missouri Public Service Commission for filing on this 6th day of July 2004.

Statutory Authority: Sections 386.040, 386.250 and 392.200 RSMo 2000.

If there are any questions, please contact:

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Jefferson City, MO 65102
(573) 751-8706, FAX (573) 751-9285
david.meyer@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 33 – Service and Billing Practices for Telecommunications Companies

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040, 386.250 RSMo. (2000) and 392.200 RSMo. (Supp. 2003), the Public Service Commission amends a rule as follows:

4 CSR 240-33.060 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2004 (29 MoReg 377-80). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended March 30, 2004, and the commission held a public hearing on this proposed amendment April 23, 2004. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the amendment. Michael Dandino of the Office of the Public Counsel also testified generally in support of the amendment at the public hearing. Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, testified generally that the proposed amendment was unnecessary. Eight (8) written comments specifically addressed the proposed amendment. At the public hearing, Natelle Dietrich of the commission's staff and Michael Dandino of the Office of the Public Counsel responded to the specific written comments and Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, provided specific comments in addition to her written comments on the proposed amendment.

RESPONSE: The commission has previously found that this rule amendment is necessary to carry out the purposes of Sections 386.040, 386.250, 392.200 and 392.540 RSMo.

COMMENT: Carl Lumley, counsel for MCI; Richard Telthorst, president of the Missouri Telecommunications Industry Association; John Idoux, senior manager, Sprint; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, filed or concurred in comments recommending the deletion of section (1) because they suggest it is redundant of a similar provision at 4 CSR 240-33.040(8)(K). At the public hearing, Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, agreed with this comment. Natelle Dietrich of the commission staff testified that the staff disagreed, because local carriers may bill on behalf of other carriers and would not be the proper party to receive billing questions. In its written comments, staff recommended the replacement of the word "the" with "each" before the reference to a toll free number for calling because multiple carriers may be referenced on a bill but each may have its own toll free number.

RESPONSE AND EXPLANATION OF CHANGE: The commission will change the proposed language in section (1) to replace the words "the" and "inquiries" with "each" and "disputes" as recommended by commission staff. The rule is not redundant of another commission rule, because it contains the requirement that a company name be associated with the toll free number

for customer use; this is distinct from the requirement elsewhere in commission rules that a bill simply contain a toll free number. Thus, the commission will not delete section (1) in its entirety.

COMMENT: Representatives of MCI, the Missouri Telecommunications Industry Association, Sprint, and CenturyTel filed or concurred in comments requesting the commission clarify section (3) to make it clear the listed restrictions are to be implemented by the basic local telecommunications carrier, and also to reference only direct-dialed numbers. SBC Missouri filed written comments in support of this modification. Carl Lumley also notes that blocking capabilities in general referenced in sections (3)-(6) reside in the local service switch or the customers' PBX equipment. At the public hearing, SBC Missouri and Natelle Dietrich of the commission's staff stated they did not object to the addition of a reference to local exchange carriers.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds proposed section (3) should be changed to refer to local exchange telecommunications carriers and direct-dialed (i.e., 1+ dialed) numbers as recommended in comments received.

COMMENT: Representatives of MCI, the Missouri Telecommunications Industry Association, Sprint, and CenturyTel filed or concurred in comments requesting the commission clarify section (4) to limit the restricted service to inmate-calling or payphone services, in lieu of the general reference to services from state correctional facilities; and also insert a reference to technical feasibility. At the public hearing, Natelle Dietrich of the commission's staff indicated the staff had no objection to these modifications. SBC Missouri indicated a reference to inmate calling services would be more accurate than a reference to payphone services and also recommended a reference to technical feasibility and requested clarification that restrictions should not apply to administrative lines.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds proposed section (4) should be changed to clarify that restrictions should only apply to inmate calling services, and will insert a reference to technical feasibility.

COMMENT: MCI requested a reference to technical feasibility in proposed section (5), because MCI does not have the technical ability to block toll calls but permit access to the toll network via a passcode. The commission inserted a similar reference in section (6). At the public hearing, Natelle Dietrich of the commission's staff indicated the staff had no objection to this modification.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds proposed section (5) should be changed to include a reference to technical feasibility to accommodate this concern.

COMMENT: SBC Missouri filed a written comment and testified at the public hearing that the reference in section (6) to the "10-10-XXX" dialing pattern would more accurately be to the "101-XXXX" dialing pattern. At the public hearing, Natelle Dietrich of the commission's staff indicated that staff was not familiar with the 101-XXXX calling pattern, and it recommended the rule not be changed unless further information was provided. Counsel for SBC Missouri then testified that the four (4) Xs represent the carrier identification code.

RESPONSE AND EXPLANATION OF CHANGE: The commission will modify this section to include a reference to both dialing patterns. "10-10-XXX" is actually a subset of the dialing

pattern "101-XXXX." The latter pattern may be more technically accurate, but the former pattern is the more widely known and understood reference.

COMMENT: R. Matthew Kohly, state director, governmental affairs, AT&T, filed written comments suggesting customers should be able to verbally request the calling restrictions in sections (3)-(6). At the public hearing, Natelle Dietrich of the commission's staff testified that the company receiving the request would have a record if the request were made in writing, and recommended that sections remain unchanged. SBC Missouri and Sprint representatives also testified that they agreed with AT&T's suggestion. Sprint noted that if a customer makes a verbal request, verification is still required and the company will document the request.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that requests for restrictions in sections (3)-(6) of the rule may be made verbally. Witnesses for Sprint, AT&T and SBC Missouri indicated their support of this modification, and Sprint discussed the safeguards it has to compensate for a lack of written documentation. The Sprint witness indicated Sprint and the industry were not prepared to handle the potentially numerous paper requests. The commission finds this testimony convincing and will modify the proposed rules accordingly.

COMMENT: SBC Missouri filed a written comment objecting to the requirement in sections (3) and (4) that the telecommunications carrier provide the listed restrictions at no cost to the customer requesting the restriction. The SBC Missouri representative also testified at the public hearing that although SBC Missouri does not currently charge for these restrictions, the commission should not impose a new requirement on companies without allowing for cost recovery. Natelle Dietrich of the commission's staff testified at the public hearing that the commission had previously considered this issue, and that at an industry workshop some local carriers were concerned that imposing a charge on customers could be single-issue ratemaking. Michael Dandino of the Office of the Public Counsel testified at the public hearing that it supported no charge for 900 blocking or toll restrictions, because charges would be impediments to that service and the expenses are already built into cost recovery.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered this issue and determined that companies that have the statutory authority to recover their costs may do so. The commission will remove the language "at no cost to that consumer" in sections (3) and (4).

COMMENT: Representatives of MCI, the Missouri Telecommunications Industry Association, Sprint, AT&T, CenturyTel, SBC Missouri, and the commission staff all filed written comments recommending modifications to section (7) to clarify that telecommunications companies need not notify customers of their rights in sections (3)-(6) during the initial telephone call to set up service, and notify customers again of those rights each time unordered services of any nature appear on a customer's bill. SBC Missouri indicated that if the rule were construed to require these communications, it would have a substantial fiscal impact.

RESPONSE AND EXPLANATION OF CHANGE: The commission will modify the language of section (7) to clarify that companies need not review the rights in sections (3)-(6) in the initial telephone call from a new customer but may provide notice through an initial written contact, and limit subsequent reviews of those rights to situations where unauthorized charges related to the types of services discussed in sections (3)-(6) appear on a customer's bill. For instance, if a customer inquires about calls from correctional facilities, the company need only inform the

customer of their rights relating to correctional facility blocking. These modifications should resolve concerns expressed by commenters that the amended rule would have a significant fiscal impact.

COMMENT: AT&T filed written comments objecting to the requirement in section (7) that annual notification of the rights in sections (3)-(6) be made through bill insert or statements on customer bills, because it is more effective to provide the information through listings in the local directory than through multiple direct mailings.

RESPONSE: The commission will not eliminate the option that notice may be provided by bill insert or statement on customer bills. These methods of communication are reasonable methods of communicating with customers and service providers still have the option of providing the communication through telephone directory listings.

COMMENT: AT&T filed written comments suggesting that if multiple telecommunications companies seek to carry out their obligations under section (7) by notifying customers of the rights in sections (3)-(6) by placing their notices in the same telephone directory, the information need only appear once. The SBC Missouri representative testified at the public hearing that it opposed AT&T's suggestion because each telecommunications company should determine how to communicate with its own customers, because a single message would blur the distinction between companies, because it would not be clear who would bear the cost of the listing, and because companies may differ on what they would like the message to include. Natelle Dietrich of the commission's staff testified at the public hearing that it had no objection to modifying section (7) to limit local directory information to one appearance rather than listing the rights with each telecommunications carrier's listing.

RESPONSE: The commission will not modify the language of section (7) to add the sentence, "If multiple telecommunications companies are represented in a telephone directory, the information need only appear once." SBC Missouri's points in response have validity. Moreover, a telephone directory listing is one of a number of options service providers have to communicate with their customers.

COMMENT: Michael Dandino of the Office of Public Counsel testified that the rules should be expanded to apply to small businesses and suggested limiting the definition of small business customer to businesses with fewer than ten (10) employees.

RESPONSE: This would require a change to the definition of "customer," and has a significant impact on all rules within this chapter, including rules not raised in this rulemaking proceeding. No fiscal analysis has been performed on this proposal. Such an amendment is beyond the scope of this proceeding and would require consideration of such topics as how to determine "employee" status (e.g., full-time, part-time, independent contractor); how to address fluctuating numbers of employees; corporate versus partnership status vis-à-vis employee status; whether to consider the number of employees at a particular location or company-wide; determining who shall determine small business status (self-reporting, auditing, monitoring). Other definitions may be possible. No changes will be made as a result of this comment.

4 CSR 240-33.060 Residential Customer Inquiries

(1) All bills shall clearly identify each company name associated with each toll free number the customers will be calling for billing inquiries and/or to cancel their previously granted consent to certain services that will be charged on the telephone bill.

(3) Upon request of a customer by verbal request, by electronic communications or by writing, all local telecommunications carriers shall restrict all direct dialed (*i.e.* 1+ dialed) 900 numbers from that customer's number.

(4) Upon request of a customer by verbal request, by electronic communications or by writing, the telecommunications carrier providing inmate calling service to state correctional facilities shall restrict all calls from inmates in state correctional facilities to that customer's number where technically feasible. This restriction does not apply to administrative lines at the correctional facilities.

(5) Upon request of a customer by verbal request, by electronic communications or by writing, all interexchange telecommunications carriers shall restrict all toll calls without a valid passcode from that customer's number where technically feasible.

(6) Upon request of a customer by verbal request, by electronic communications or by writing, and where technically feasible, local telecommunications carriers shall restrict all calls using a dialing pattern such as 10-10-XXX or 101-XXXX from that customer's number.

(7) Customers shall be notified of the rights in Sections 3, 4, 5 and 6 above at the time of establishing service, through a statement on the customer's first bill or through a welcome letter. Additional notice shall be provided annually thereafter by bill insert, statement on customer bills or annually in the telephone directory. A customer shall be notified of the restriction option(s) in Section(s) 3, 4, 5 or 6 above each time that customer notifies a telecommunications carrier or its billing agent that the customer's bill contains unauthorized charges related to the corresponding section(s) above.

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

DATE: July 6, 2004

RE: Approval of Final Rule and Authorization to File Order Adopting Final Rule with the Office of the Secretary of State


CASE NO: TX-2001-512

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

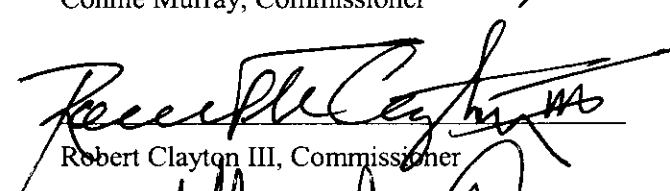
4 CSR 240-33.060 Residential Customer Inquiries.



Steve Gaw, Chair



Connie Murray, Commissioner



Robert Clayton III, Commissioner



Jeff Davis, Commissioner



Linward "Lin" Appling, Commissioner