

MEMORANDUM

FILED

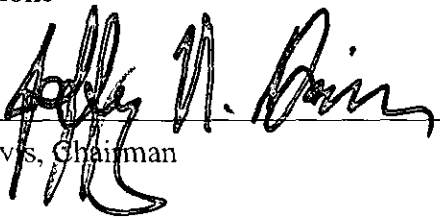
JAN 16 2007

TO: Colleen M. Dale, Secretary
DATE: December 12, 2006
RE: Authorization to File Proposed Rulemaking with the Office of Secretary of State
CASE NO: TX-2007-0086

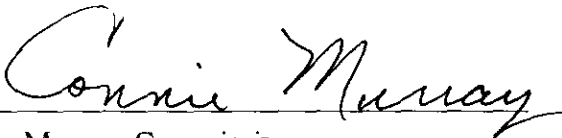
Missouri Public
Service Commission

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Proposed Rulemaking with the Office of the Secretary of State, to wit:

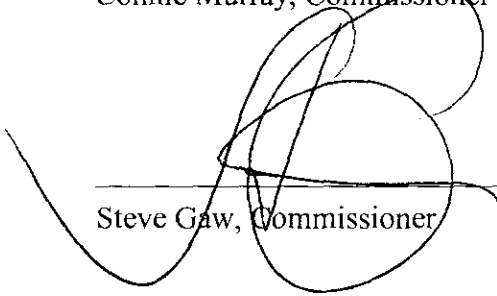
Proposed Rule 4 CSR 240-37.020 – Number Pooling and Number Conservation Efforts – Definitions



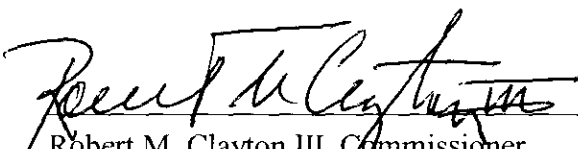
Jeff Davis, Chairman



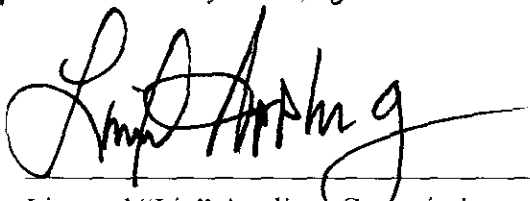
Connie Murray, Commissioner



Steve Gaw, Commissioner



Robert M. Clayton III, Commissioner



Linward "Lin" Appling, Commissioner

Robin Carnahan
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

Administrative Rules Stamp

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JAN 16 2007

SECRETARY OF STATE
ADMINISTRATIVE RULES

COPY

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

- A. Rule Number 4 CSR 240- 37.020
Diskette File Name 4 CSR 240-37,020
Name of person to call with questions about this rule:
Content Colleen M. Dale Phone 573-751-4255 FAX 573-751-6010
E-mail address cully.dale@psc.mo.gov
Data entry Colleen M. Dale Phone 573-751-4255 FAX 573-751-6010
E-mail address cully.dale@psc.mo.gov
Interagency mailing address GOB, 200 Madison Street, 8th Floor Jefferson City, MO
Statutory Authority 386.250 Current RSMo date 2000
Date filed with the Joint Committee on Administrative Rules December 13, 2006

B. CHECKLIST guide for rule packets:

- | | |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Forms, number of pages _____ |
| <input checked="" type="checkbox"/> Cover letter | <input type="checkbox"/> Authority section with history of the rule |
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Public cost statement |
| <input type="checkbox"/> Small business impact statement | <input type="checkbox"/> Private cost statement |
| <input type="checkbox"/> Fiscal notes | <input type="checkbox"/> Hearing date |

C. RULEMAKING ACTION TO BE TAKEN

- Emergency rulemaking (choose one) rule, amendment, rescission, or termination

MUST include effective date March 30, 2007

- Proposed Rulemaking (choose one) rule, amendment, or rescission
 Order of Rulemaking (choose one) rule, amendment, rescission, or termination

MUST complete page 2 of this transmittal

- Withdrawal (choose one) rule, amendment, rescission or emergency)
 Rule action notice In addition Rule under consideration

D. SPECIFIC INSTRUCTIONS: Any additional information you may wish to provide to our staff

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

DEC 13 2006

ADMINISTRATIVE RULES

RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number 37.020

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. Give an explanation of each section, subsection, etc. which has been changed since the proposed rulemaking was published in the Register.

4 CSR 240-37.020 Definitions

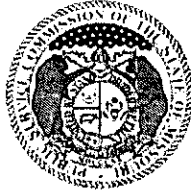
(6) Exempt carriers [*is*] **are rural telephone companies and Tier III CMRS** [*a carrier that does not have the technical capability to*] providers **that have not received a specific request for the provision of local number portability from another carrier.** A carrier is no longer an exempt carrier once it has received a bona fide request and the specified federal guidelines of either thirty (30), sixty (60) or one hundred eighty (180) days have elapsed. [*A carrier that has the technical capability to provide local number portability but is not currently providing local number portability is not an exempt carrier.*]

(8) FCC Form U1 of Form 502 indicates a carrier's [*current*] **reported** numbering resource utilization level.

(14) North American Numbering Plan Administrator is responsible for coordination and administration of the North American Numbering dialing plan[s].

(24) Tier III CMRS provider is a non-nationwide Commercial Mobile Radio Service provider with no more than five hundred thousand (500,000) subscribers as of the end of 2001.

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

JEFF DAVIS
Chairman

CONNIE MURRAY

STEVE GAW

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration

ROBERT SCHALLENBERG
Director, Utility Services

WARREN WOOD
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

January 15, 2007

Honorable Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Dear Secretary Carnahan:

Re: 4 CSR 240-37.020 Definitions

CERTIFICATION OF ADMINISTRATIVE RULE

I do 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 15th day of January, 2007.

Statutory Authority: Sections 386.250(6) RSMo 2000

If there are any questions regarding the content of this order of rulemaking, please contact:

Colleen M. Dale, Secretary
Missouri Public Service Commission
200 Madison Street, P.O. Box 360
Jefferson City, MO 65102
(573) 751-4255
cully.dale@psc.mo.gov

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Colleen M. Dale", is written over a faint, circular stamp.

Colleen M. Dale
Secretary
Missouri Public Service Commission

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**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 37 – Number Pooling and Number Conservation Efforts**

JAN 16 2007

**SECRETARY OF STATE
ADMINISTRATIVE RULES**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.210.2 RSMo Supp 2005 and 386.250(2) RSMo 2000, the Public Service Commission adopts a rule as follows:

4 CSR 240-37.020 Definitions is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 1, 2006 (31 MoReg 1758-59). 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: The written public comment period ended December 4, 2006 as the commission held the record open until the conclusion of the public hearing, and the commission held a public hearing on this proposed rule on December 4, 2006. The commission received six written comments pertaining to this rule and several of those commenters testified at the public hearing. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the rule. Counsel from the Office of the Public Counsel filed comments and testified at the public hearing generally in support of the rule. Craig Johnson on behalf of the Missouri Independent Telephone Group filed comments generally opposed to the rule because until competition exists in MITG exchanges, number conservation methods cannot be utilized. Wireless carriers T-Mobile Central LLC d/b/a T-Mobile, Verizon Wireless, Cingular Wireless and Sprint Nextel Corporation filed comments generally opposed to the rule because the commission lacks jurisdiction to adopt the proposed rules and the proposed rules conflict with the federal regulatory framework or impose unnecessary and problematic obligations that interfere with the commission's goals.

RESPONSE: No changes have been made to the rule as a result of the general comments. The Commission's authority to promulgate the rule, in addition to its general authority under Section 386.250(2) RSMo. (2000) to supervise telecommunications companies, is supported by a series of decisions by the Federal Communications Commission granting to the Missouri Public Service Commission the authority to implement mandatory thousands-block number pooling and other number conservation efforts in all parts of the state. In its Order in CC Docket 99-200 adopted July 20, 2000, the Federal Communications Commission stated that "[n]umbering resource optimization measures are necessary to address the considerable burdens imposed on society by the inefficient use of numbers; thus, we have enlisted the state regulatory commissions to assist the FCC in these efforts by delegating significant authority to them to implement certain measures within their local jurisdictions." Order at 7, para. 10. The delegations of authority include most recently the Order and Fifth Further Notice of Proposed Rulemaking adopted February 17, 2006 in In the Matter of Numbering Resource Optimization and Petition of the Missouri Public Service Commission for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket No. 99-200 (FCC 06-14), where the FCC granted this Commission authority to implement mandatory thousands-block number

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pooling in the 417, 573, 636 and 660 NPAs. The Federal Communications Commission had previously delegated similar authority to this Commission for the other area codes in Missouri. Section 386.210(2) provides that the Commission may "act as an agent or licensee for the United States of America, or any official, agency or instrumentality thereof," and thus the Commission has additional authority under this statutory section to carry out the FCC's directives.

COMMENT: Wireless carriers T-Mobile Central LLC d/b/a T-Mobile, Verizon Wireless, Cingular Wireless and Sprint Nextel Corporation through counsel filed comments requesting that the commission modify the definition of 'carrier' at section 37.020(2) to clarify what entities are subject to the rule.

RESPONSE: This modification was made before the initial proposed rule was submitted, and it appears the comment pertains to an earlier draft. As the comment has been already been addressed, the commission will not modify the definition.

COMMENT: Michael Dandino on behalf of the Office of Public Counsel, Craig Johnson on behalf of the Missouri Independent Telephone Group, W.R. England III and Brian McCartney on behalf of the Small Telephone Company Group, and Natelle Dietrich on behalf of the staff of the commission all filed written comments and testified at the public hearing regarding a modification of the definition of 'exempt carrier' at section 37.020(6). The Missouri Independent Telephone Group and the Small Telephone Company Group recommended that the commission modify the definition to include or mirror the definition of exempt carrier created by the Federal Communications Commission. The Public Counsel also expressed concern that the rule as proposed could subject telephone customers in areas with no competition to fund Local Number Portability or number pooling that may be unneeded in the absence of competition. Ms. Dietrich on behalf of the commission's staff stated that the Federal Communications Commission draws a distinction between exemptions for LNP and exemptions for pooling. Ms. Dietrich agreed that the Federal Communications Commission does not expect telecommunications carriers that are not capable of providing local number portability to provide local number portability solely to accommodate number pooling. She indicated that the Federal Communications Commission determined that it is reasonable to require local number portability only in areas where competition dictates its demand. In an effort to not impede competition, Ms. Dietrich recommended that carriers with both hardware and software technical capability be required to implement number pooling. At the public hearing, commenters extensively discussed compensation for transporting calls, and Ms. Dietrich testified that compensation for transporting calls from a rural carrier to a wireless switch remains an issue regardless of whether pooling is required as a result of the commission's proposed rule or local number portability obligations resulting from a bona fide request. Mr. England on behalf of the Small Telephone Company Group expressed concerns over potential loss of waiver or suspension rights.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with its staff that competition should not be impeded but does not want to require rural carriers to participate in number pooling if the numbers to be pooled will not be utilized by another carrier in the near future. The commission will modify the definition to require carriers to implement number pooling in the same time frame as the Federal Communications Commission's local number portability requirements. The commission will also add a definition of Tier III CMRS provider to clarify a term used in the revised definition of "exempt carrier." The commission clarifies that rural carriers will not be required to pay transport for any numbers assigned from their rate center

pool until such time as an interconnection agreement or some sort of compensation arrangement is in place. Nothing this rule prevents carriers from seeking waivers or suspensions.

COMMENT: Robert Gryzmala on behalf of AT&T Missouri filed comments and testified at hearing requesting that the commission modify the definition of 'FCC Form UI' at section 37.020(8) to substitute the word "reported" in lieu of the word "current" to more accurately reflect the nature of the forms. At the public hearing, Larry Dority on behalf of CenturyTel joined in AT&T Missouri's comments and the commission staff agreed as well.

RESPONSE AND EXPLANATION OF CHANGE: AT&T Missouri's request is reasonable and in keeping with Federal Communications Rule pertaining to the form, and the commission will modify the definition.

COMMENT: Robert Gryzmala on behalf of AT&T Missouri filed comments and testified at hearing requesting that the commission modify the definition of 'North American Numbering Plan Administrator' at section 37.020(14) to substitute the word "plan" for the word "plans" because there is only one North American Numbering dialing plan. At the public hearing, Larry Dority on behalf of CenturyTel joined in AT&T Missouri's comments, and the commission staff agreed as well.

RESPONSE AND EXPLANATION OF CHANGE: AT&T Missouri's request is reasonable and accurate, and the commission will modify the definition.

4 CSR 240-37.020 Definitions

(6) Exempt carriers are rural telephone companies and Tier III CMRS providers that have not received a specific request for the provision of local number portability from another carrier. A carrier is no longer an exempt carrier once it has received a bona fide request and the specified federal guidelines of either thirty (30), sixty (60), or one hundred eighty (180) days have elapsed.

(8) FCC Form U1 of Form 502 indicates a carrier's reported numbering resource utilization level.

(14) North American Numbering Plan Administrator is responsible for coordination and administration of the North American Numbering dialing plan.

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Robin Carnahan
Secretary of State

Administrative Rules Division
Rulemaking Transmittal Receipt

Rule ID: 6370
Date Printed: 1/16/2007
Rule Number: 4 CSR 240-37.020
Rulemaking Type: Final Order Rule
Date Submitted to Administrative Rules Division: 1/16/2007
Date Submitted to Joint Committee on Administrative Rules: 12/13/2006

Name of Person to Contact with questions concerning this rule:

Content: Collen Dale	Phone: 751-4255	Email: cully.dale@psc.mo.gov	Fax: 526-6010
RuleDataEntry:	Phone:	Email:	Fax:

Included with Rulemaking:

Cover Letter

1/16/2007

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