

MEMORANDUM

FILED

JAN 16 2007

TO: Colleen M. Dale, Secretary

DATE: December 12, 2006

Missouri Public
Service Commission


RE: Authorization to File Proposed Rulemaking with the Office of Secretary of State

CASE NO: TX-2007-0086

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:

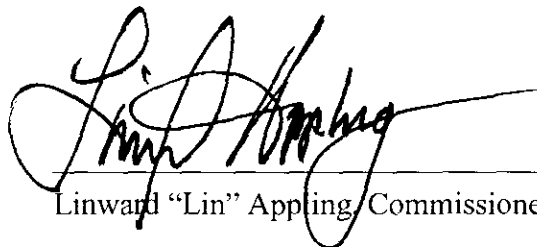
Proposed Rule 4 CSR 240-37.030 – Number Pooling and Number Conservation Efforts – Thousands-Block Number Pooling


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

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Administrative Rules Stamp

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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- 37.030

Diskette File Name 4 CSR 240-37.030

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:

☒ This transmittal completed

☐ Forms, number of pages _____

☒ Cover letter

☐ Authority section with history of the rule

☐ Affidavit

☐ Public cost statement

☐ Small business impact statement

☐ Private cost statement

☒ Fiscal notes

☐ 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 37.030

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 240-37.030 Thousands-block Number Pooling

(1) Thousands-block number pooling for all carriers except exempt carriers shall be implemented in each Missouri rate center within thirty (30) days after the effective date of this rule unless otherwise determined by the Thousands-Block Pooling Administrator. **An exempt carrier shall implement pooling no later than the implementation of local number portability implemented pursuant to the bona fide request federal guidelines of either thirty (30), sixty (60), or one hundred eighty (180) days.**

(4) **Unless otherwise provided by 47 C.F.R. 52.15(f), [A] all carriers shall assign all available telephone numbers within an opened thousands-block before assigning telephone numbers from an uncontaminated thousands-block (for purposes of section (4) "assignment"). [, unless the available numbers in the opened thousands-block are not sufficient to meet a specific customer request.]** This requirement shall apply to a carrier's existing numbering resources as well as any new numbering resources it obtains in the future. **If a carrier is not able to assign all available numbers within an opened thousands-block before assigning telephone numbers from an uncontaminated thousands-block, the following reporting conditions apply:**

(A) [A] If the carrier [that] opens [an] the uncontaminated thousands-block [prior to assigning all available] to meet the needs of a customer that has requested multiple telephone numbers and the quantity of remaining numbers within [an opened] the contaminated thousands-block [(for purposes of section (4) "assignment") shall, within ten (10) days of opening the uncontaminated thousands-block, submit a report via the commission's Electronic Filing and Information System (EFIS) unless the assignment was previously approved pursuant to 4 CSR 240-37.040. The Report shall explain why the assignment is reasonable and include, but not be limited to, the following:] **is not sufficient to meet the request, no commission reporting under this section is required.**

- [1. A genuine request from a customer detailing the specific need for telephone numbers;*
- 2. A detailed explanation as to the carrier's inability to meet the specific customer request; and*
- 3. A demonstration that the carrier has a verifiable need for the assignment and has exhausted all other available remedies designed to avoid wasting numbering resources.]*

(B) If the assignment was previously approved pursuant to 4 CSR 240-37.040, no commission reporting under this section is required. *[A commission case may be opened to address concerns with the assignment.*

- 1. The carrier will have the burden to prove the assignment was reasonable.*
- 2. If directed by the commission, a carrier shall provide additional justification demonstrating the reasonableness of opening an uncontaminated thousands-block prior to assigning all available telephone numbers within an opened thousands-block.*
- 3. Upon a finding by the commission that a carrier inappropriately assigned telephone numbers from an uncontaminated thousands-block, the North American Numbering Plan Administrator or the Thousands-block Pooling Administrator shall suspend assignment or allocation of any additional numbering resources to that carrier in the applicable NPA until the carrier demonstrates that it does not have sufficient numbering resources to meet a specific customer request.]*

(C) If the carrier opens an uncontaminated thousands-block prior to assigning all available telephone numbers within an opened thousands-block for any purpose other than those listed in subsections (A) and (B) above, the carrier shall, within ten (10) days of opening the uncontaminated thousands-block, submit a report via the commission's Electronic Filing and Information System (EFIS). The report shall demonstrate that the assignment is reasonable, the carrier has a verifiable need for the assignment, and the carrier has exhausted all other available remedies designed to avoid wasting numbering resources (examples shall include but are not limited to a copy of the customer request detailing the specific need for telephone numbers and the reason the carrier cannot meet the specific customer request).

REVISED PRIVATE ENTITY COST: This proposed rule will not cost private entities more than *[four hundred seventy-seven]* **fifty-one** thousand eight hundred *[fifty-four]* **forty** (\$*[477,854]***51,840**) dollars in the aggregate. **See attached.**

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)
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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 240-37.030 Thousands Block Number Pooling

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 embossed seal.

Colleen M. Dale
Secretary
Missouri Public Service Commission

COPY

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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

ORDER OF RULEMAKING

SECRETARY OF STATE
ADMINISTRATIVE RULES

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 240-37.030 Thousands Block Number Pooling 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 1759-62). 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 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 through counsel 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: The Missouri Independent Telephone Group submitted comments and testified at the public hearing that as proposed, section 37.030(1) required all carriers except "exempt" carriers to implement pooling immediately. Because thousands blocks cannot be assigned outside their rate centers, if blocks with assigned numbers are pooled, companies will have to implement local number portability to accommodate those customers even though they are otherwise exempt from doing so. Thus, the Missouri Independent Telephone Group requested that the commission clarify that rural telecommunications companies have no obligation to pool or implement local number portability in advance of actual competition. The Small Telephone Company Group submitted comments and testified at the public hearing that the rule as proposed would require its members to return both contaminated and uncontaminated thousands blocks even though they could not be used in other rate centers, and local number portability would be necessary to maintain service to existing customers even as the Federal Communications Commission has said that its members are exempt from local number portability requirements until they receive a bona fide request to port numbers. Natelle Dietrich on behalf of the staff of the commission submitted comments and testified at the public hearing that the commission should modify the rule as proposed to indicate that small rural ILECs that have the technical capability to provide local number portability should only donate back uncontaminated thousands blocks. She believes this proposal will eliminate most, if not all, costs associated with the fiscal impact of the rule and addresses the concerns raised by the Missouri Independent Telephone Group and the Small Telephone Company Group. At the public hearing, W.R. England III on behalf of the Small Telephone Company Group and Ms. Dietrich discussed the time frames required to implement local number portability and the differences between those time frames and the time frames for number pooling implementation. Ms. Dietrich indicated that local number portability could be required to be implemented in as little as thirty days, while pooling implementation could take as much as six months. 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 section 37.030(1) to require exempt carriers to implement number pooling in the same time frame as the Federal Communications Commission's local number portability requirements. 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. Carriers are encouraged to place an intercept message on the switch to notify customers that calls to numbers that have been pooled may be a toll call until such time as those calls can be completed on a local basis.

COMMENT: Robert Gryzmala on behalf of AT&T Missouri, and wireless carriers T-Mobile Central LLC d/b/a T-Mobile, Verizon Wireless, Cingular Wireless and Sprint Nextel Corporation through counsel, filed comments and Mr. Gryzmala testified at hearing regarding the reporting requirements in subsection 37.030(4)(A) that require a carrier opening an uncontaminated thousands-block prior to assigning all available telephone numbers in an opened thousands-block to file a report with the commission. AT&T Missouri indicated that this requirement exceeds the commission's delegated authority because a carrier must merely be prepared to demonstrate two of the three items called for by the commission's rule. AT&T Missouri stated that the company already had safeguards in place to limit assigning numbers from contaminated blocks before assigning numbers from uncontaminated blocks. AT&T Missouri also stated that that information would be voluminous. The wireless carriers indicated that this reporting requirement was unlike any required by the Federal Communications Commission and that the commission could monitor compliance by using FCC Form 502. Natelle Dietrich on behalf of the commission's staff responded that federal rules require companies that open uncontaminated blocks prior to assigning all available telephone numbers within an opened thousands-block shall submit a report to the commission explaining their reasons for that action, including a demonstration that the carrier has a verifiable need for the numbers and has exhausted all other available remedies. Ms. Dietrich recommended that the commission modify the proposed rule to coordinate the language in section 37.030(4) and section 37.030(4)(A). At the public hearing, AT&T Missouri agreed with the commission's staff's proposed changes but recommended additional language to indicate that assignments should be made consistent with customer needs. At the public hearing, Larry Dority on behalf of CenturyTel joined in AT&T Missouri's comments.

RESPONSE AND EXPLANATION OF CHANGE: The Federal Communications Commission has directed the commission to make a finding as to whether a service provider has inappropriately assigned numbers if they are assigned from uncontaminated blocks prior to assigning all available telephone numbers within an opened thousands-block. The commission initially proposed this rule to implement this requirement. The commission will modify the rule to incorporate changes proposed by the commission's staff to clarify the reporting requirements and information the commission will consider in determining whether the assignment was inappropriate. The commission declines to add the additional language proposed by AT&T Missouri because it implies that any customer need is a justifiable reason for opening an uncontaminated thousands-block.

COMMENT: John Idoux on behalf of Embarq Missouri, Inc. submitted comments requesting that the commission state in section 37.030 that thousands-block pooling will be conducted according to guidelines established by the Alliance for Telecommunications Industry Solutions and the Industry Numbering Committee. These guidelines are documented by these administrators on the internet.

RESPONSE: The commission agrees with the recommendation that thousands-block pooling be conducted according to these industry guidelines. However, section 536.031.4 RSMo (Supp. 2005) permits an agency to incorporate by reference rules, regulations, standards and guidelines of an agency of the United States or a nationally or state-recognized organization or association without publishing the material in full only if the reference fully identifies the publisher, address, and date of the material, and states that the referenced rule, regulation, standard or guideline does not include any later amendments or additions. The industry guidelines in this case are very

dynamic documents and change on a regular basis, and the commission expects that companies will follow them regardless of whether the commission requires them to do so in a rule. As the commission cannot comply with section 536.031.4 by referring to these guidelines in their most current form, the commission will not incorporate this reference.

4 CSR 240-37.030 Thousands Block Number Pooling

(1) Thousands-block number pooling for all carriers except exempt carriers shall be implemented in each Missouri rate center within thirty (30) days after the effective date of this rule unless otherwise determined by the Thousands-Block Pooling Administrator. An exempt carrier shall implement pooling no later than the implementation of local number portability implemented pursuant to the bona fide request federal guidelines of either thirty (30), sixty (60), or one hundred eighty (180) days.

(4) Unless otherwise provided by 47 C.F.R. 52.15(f), all carriers shall assign all available telephone numbers within an opened thousands-block before assigning telephone numbers from an uncontaminated thousands-block (for purposes of section (4) "assignment"). This requirement shall apply to a carrier's existing numbering resources as well as any new numbering resources it obtains in the future. If a carrier is not able to assign all available numbers within an opened thousands block before assigning telephone numbers from an uncontaminated thousands block, the following reporting conditions apply:

(A) If the carrier opens the uncontaminated thousands-block to meet the needs of a customer that has requested multiple telephone numbers and the quantity of remaining numbers within the contaminated thousands-block is not sufficient to meet the request, no commission reporting under this section is required.

(B) If the assignment was previously approved pursuant to 4 CSR 240-37.040, no commission reporting under this section is required.

(C) If the carrier opens an uncontaminated thousands-block prior to assigning all available telephone numbers within an opened thousands-block for any purpose other than those listed in subsections (A) and (B) above, the carrier shall, within ten (10) days of opening the uncontaminated thousands-block, submit a report via the commission's Electronic Filing and Information System (EFIS). The report shall demonstrate that the assignment is reasonable, the carrier has a verifiable need for the assignment, and the carrier has exhausted all other available remedies designed to avoid wasting numbering resources (examples shall include but are not limited to a copy of the customer request detailing the specific need for telephone numbers and the reason the carrier cannot meet the specific customer request).

REVISED PRIVATE ENTITY COST: This proposed rule will not cost private entities more than fifty-one thousand eight hundred forty (\$51,840) dollars in the aggregate. See attached.

FISCAL NOTE
PRIVATE ENTITY COST (Revised)

I. RULE NUMBER

Title: Missouri Department of Economic Development

Division: Missouri Public Service Commission

Chapter: Number Pooling and Number Conservation Efforts

Type of Rulemaking: Proposed

Rule Number and Name: 4 CSR 240-37.030 Thousands-block Number Pooling

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification* by types of the business entities which would likely be affected:	Estimate in the aggregate as to the first year cost of compliance with the rule by the affected entities:	Estimate in the aggregate as to the first year cost of compliance with the rule by the affected entities (years 2-5):
4	Class A Local Telephone Companies	\$55,000	\$0
24	Class B Local Telephone Companies	\$0 See IV.6 below	\$0 See IV. 6 below
62	Class C Local Telephone Companies	\$14,960 See IV.6 below	\$51,840 See IV. 6 below
0	Class Interexchange Companies	\$0	\$0
	Class Other	\$0	\$0
	All entities	\$69,960	\$51,840

* Class A Telephone Companies are incumbent local telephone companies with more than \$100,000,000 annual revenues system wide; Class B Telephone Companies are incumbent local telephone companies with \$100,000,000 annual revenues or less system wide; Class C Local Telephone Companies are competitively classified telecommunications companies, Class Interexchange Companies are long distance providers, Class Other are any other companies receiving numbering resources from the North American Numbering Plan Administrator and the Pooling Administrator.

III. WORKSHEET

1. The proposed rule applies to all carriers operating in Missouri that have been assigned or have requested numbering resources from the North American Numbering Plan Administrator or the Thousands-block Pooling Administrator except those companies or providers that meet the definition of an exempt carrier in 4 CSR 240-37.020.

IV. ASSUMPTIONS

1. The life of the rule is estimated to be five years.
2. Fiscal year 2006 dollars were used to estimate costs. No adjustment for inflation is applied.
3. Estimates assume no sudden change in technology that would influence costs.
4. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission and Federal Communications Commission rules and regulations.
5. Estimates are based on input from entities affected by the proposed rule.
6. Thirty-eight Class B and Class C entities estimated a one-time implementation cost of approximately \$1,300,000 if not exempted from the proposed rule.
 - These amounts are based on information the affected entities submitted to the Federal Communications Commission (FCC) and the Missouri Public Service Commission (MoPSC) in response to a related federal requirement.
 - In response to the information submitted to the FCC by the affected entities, the MoPSC informed the FCC that based on the same estimates, as provided to the MoPSC, the average one-time cost should have been approximately \$76,000, not \$1.3 million. The amount supported by MoPSC evidence was used to complete the fiscal analysis.
 - It was determined that all Class B entities would be exempt from the proposed rulemaking until such time as the carriers were required to participate in local number portability requirements pursuant to federal regulations. The costs discussed in this assumption will then be attributable to federal local number portability requirements, not this rulemaking.
7. One Class A entity indicated that the reporting requirements of the rule would impose labor costs of approximately \$100 per hour. Since it is not known how often the reporting requirements would be invoked it is not possible to estimate a fiscal impact.

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

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SECRETARY OF STATE
ADMINISTRATIVE RULES

AMENDED ORDER OF RULEMAKING

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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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COMMENT: The Missouri Independent Telephone Group submitted comments and testified at the public hearing that as proposed, section 37.030(1) required all carriers except "exempt" carriers to implement pooling immediately. Because thousands blocks cannot be assigned outside their rate centers, if blocks with assigned numbers are pooled, companies will have to implement local number portability to accommodate those customers even though they are otherwise exempt from doing so. Thus, the Missouri Independent Telephone Group requested that the commission clarify that rural telecommunications companies have no obligation to pool or implement local number portability in advance of actual competition. The Small Telephone Company Group submitted comments and testified at the public hearing that the rule as proposed would require its members to return both contaminated and uncontaminated thousands blocks even though they could not be used in other rate centers, and local number portability would be necessary to maintain service to existing customers even as the Federal Communications Commission has said that its members are exempt from local number portability requirements until they receive a bona fide request to port numbers. Natelle Dietrich on behalf of the staff of the commission submitted comments and testified at the public hearing that the commission should modify the rule as proposed to indicate that small rural ILECs that have the technical capability to provide local number portability should only donate back uncontaminated thousands blocks. She believes this proposal will eliminate most, if not all, costs associated with the fiscal impact of the rule and addresses the concerns raised by the Missouri Independent Telephone Group and the Small Telephone Company Group. At the public hearing, W.R. England III on behalf of the Small Telephone Company Group and Ms. Dietrich discussed the time frames required to implement local number portability and the differences between those time frames and the time frames for number pooling implementation. Ms. Dietrich indicated that local number portability could be required to be implemented in as little as thirty days, while pooling implementation could take as much as six months. 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 section 37.030(1) to require exempt carriers to implement number pooling in the same time frame as the Federal Communications Commission's local number portability requirements. 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. Carriers are encouraged to place an intercept message on the switch to notify customers that calls to numbers that have been pooled may be a toll call until such time as those calls can be completed on a local basis.

COMMENT: Robert Gryzmala on behalf of AT&T Missouri, and wireless carriers T-Mobile Central LLC d/b/a T-Mobile, Verizon Wireless, Cingular Wireless and Sprint Nextel Corporation through counsel, filed comments and Mr. Gryzmala testified at hearing regarding the reporting requirements in subsection 37.030(4)(A) that require a carrier opening an uncontaminated thousands-block prior to assigning all available telephone numbers in an opened thousands-block to file a report with the commission. AT&T Missouri indicated that this requirement exceeds the commission's delegated authority because a carrier must merely be prepared to demonstrate two of the three items called for by the commission's rule. AT&T Missouri stated that the company already had safeguards in place to limit assigning numbers from contaminated blocks before assigning numbers from uncontaminated blocks. AT&T Missouri also stated that that information would be voluminous. The wireless carriers indicated that this reporting requirement was unlike any required by the Federal Communications Commission and that the commission could monitor compliance by using FCC Form 502. Natelle Dietrich on behalf of the commission's staff responded that federal rules require companies that open uncontaminated blocks prior to assigning all available telephone numbers within an opened thousands-block shall submit a report to the commission explaining their reasons for that action, including a demonstration that the carrier has a verifiable need for the numbers and has exhausted all other available remedies. Ms. Dietrich recommended that the commission modify the proposed rule to coordinate the language in section 37.030(4) and section 37.030(4)(A). At the public hearing, AT&T Missouri agreed with the commission's staff's proposed changes but recommended additional language to indicate that assignments should be made consistent with customer needs. At the public hearing, Larry Dority on behalf of CenturyTel joined in AT&T Missouri's comments.

RESPONSE AND EXPLANATION OF CHANGE: The Federal Communications Commission has directed the commission to make a finding as to whether a service provider has inappropriately assigned numbers if they are assigned from uncontaminated blocks prior to assigning all available telephone numbers within an opened thousands-block. The commission initially proposed this rule to implement this requirement. The commission will modify the rule to incorporate changes proposed by the commission's staff to clarify the reporting requirements and information the commission will consider in determining whether the assignment was inappropriate. The commission declines to add the additional language proposed by AT&T Missouri because it implies that any customer need is a justifiable reason for opening an uncontaminated thousands-block. Consistent with the Federal Communications Commission's Report and Order and Further Notice of Proposed Rule Making (*In the Matter of Numbering Resources Optimization*, CC Docket No 99-200, released March 31, 2000), carriers are required to protect blocks of telephone numbers from contamination unless the carrier does not have an adequate supply of numbers in its inventory to meet customer needs. As the Federal Communications Commission notes, meeting a "customer need" does not include meeting requests for a specific or "vanity" number.

COMMENT: John Idoux on behalf of Embarq Missouri, Inc. submitted comments requesting that the commission state in section 37.030 that thousands-block pooling will be conducted according to guidelines established by the Alliance for Telecommunications Industry Solutions and the Industry Numbering Committee. These guidelines are documented by these administrators on the internet.

RESPONSE: The commission agrees with the recommendation that thousands-block pooling be conducted according to these industry guidelines. However, section 536.031.4 RSMo (Supp. 2005) permits an agency to incorporate by reference rules, regulations, standards and guidelines of an agency of the United States or a nationally or state-recognized organization or association without publishing the material in full only if the reference fully identifies the publisher, address, and date of the material, and states that the referenced rule, regulation, standard or guideline does not include any later amendments or additions. The industry guidelines in this case are very dynamic documents and change on a regular basis, and the commission expects that companies will follow them regardless of whether the commission requires them to do so in a rule. As the commission cannot comply with section 536.031.4 by referring to these guidelines in their most current form, the commission will not incorporate this reference.

4 CSR 240-37.030 Thousands Block Number Pooling

(1) Thousands-block number pooling for all carriers except exempt carriers shall be implemented in each Missouri rate center within thirty (30) days after the effective date of this rule unless otherwise determined by the Thousands-Block Pooling Administrator. An exempt carrier shall implement pooling no later than the implementation of local number portability implemented pursuant to the bona fide request federal guidelines of either thirty (30), sixty (60), or one hundred eighty (180) days.

(4) Unless otherwise provided by federal law, all carriers shall assign all available telephone numbers within an opened thousands-block before assigning telephone numbers from an uncontaminated thousands-block (for purposes of section (4) "assignment"). This requirement shall apply to a carrier's existing numbering resources as well as any new numbering resources it obtains in the future. If a carrier is not able to assign all available numbers within an opened thousands block before assigning telephone numbers from an uncontaminated thousands block, the following reporting conditions apply:

(A) If the carrier opens the uncontaminated thousands-block to meet the needs of a customer that has requested multiple telephone numbers and the quantity of remaining numbers within the contaminated thousands-block is not sufficient to meet the request, no commission reporting under this section is required.

(B) If the assignment was previously approved pursuant to 4 CSR 240-37.040, no commission reporting under this section is required.

(C) If the carrier opens an uncontaminated thousands-block prior to assigning all available telephone numbers within an opened thousands-block for any purpose other than those listed in subsections (A) and (B) above, the carrier shall, within ten (10) days of opening the uncontaminated thousands-block, submit a report via the commission's Electronic Filing and Information System (EFIS). The report shall demonstrate that the assignment is reasonable, the carrier has a verifiable need for the assignment, and the carrier has exhausted all other available remedies designed to avoid wasting numbering resources (examples shall include but are not limited to a copy of the customer request detailing the specific need for telephone numbers and the reason the carrier cannot meet the specific customer request).

REVISED PRIVATE ENTITY COST: This proposed rule will not cost private entities more than fifty-one thousand eight hundred forty (\$51,840) dollars in the aggregate. See attached.



Robin Carnahan
Secretary of State

**Administrative Rules Division
Rulemaking Transmittal Receipt**

Rule ID: 6371
Date Printed: 1/16/2007
Rule Number: 4 CSR 240-37.030
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:

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Included with Rulemaking:

Cover Letter

1/16/2007

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