

MATT BLUNT
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

*Administrative Rules Stamp

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JUL 07 2004

SECRETARY OF STATE
ADMINISTRATIVE RULES

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

A. Rule Number 4 CSR 240-33.070
Diskette File Name Final Rule 33.070
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 33.070

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.)

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

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
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

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 4 CSR 240-33.070
Discontinuance of Service to Residential Customers.

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:
David Meyer, Associate General Counsel
P.O. Box 360
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 240-33.070 Discontinuance of Service to Residential Customers 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 381). No changes have been made in the text of the proposed amendment, so it is not 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. Six (6) 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; Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri; R. Matt Kohly, state director, government affairs, AT&T; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, filed comments either providing an additional option for a telecommunications company to attempt to reach a customer whose service is to be immediately blocked or discontinued as a result of the provisions of section (9) involving the use of regular mail and subsequent attempts to reach the customer by telephone, or deleting the requirement that contact be made via certified mail. MCI and MTIA representatives explained that receipt of certified mail might be delayed because of the signature requirement. SBC Missouri and AT&T indicated that certified mail is potentially costly. SBC Missouri also indicated that notice via door hangers is not a suitable substitute because some customers' doors may not be accessible, a door hanger could be easily removed, and use of door hangers could lead to allegations of libel or invasions of privacy. AT&T indicated that by the time service is disconnected, the company would already have made numerous attempts to contact the customer. Natelle Dietrich of the commission's staff at the

public hearing testified that the initial draft of the rule did not include immediate customer notification but that industry and commissioner feedback supported immediate notification, and that the staff opposed any alterations to this section.

RESPONSE: The commission will not modify this section. This section only deals with service that was immediately blocked or disconnected because of illegal or unauthorized use. Customers should be notified of the blocking or disconnection of their service in a way that will obtain their attention and certified, overnight mail or door hangers are methods of obtaining that attention.

COMMENT: Michael Dandino of the Office of the Public Counsel testified at the public hearing that it is opposed to any type of surcharge, especially a surcharge for the Universal Service Fund, and that it is unfair for local service to be discontinued for nonpayment of a Universal Service Fund surcharge as provided in section (3).

RESPONSE: The commission will not modify this section. The commission has previously determined in a proceeding before it that a universal service fund surcharge is the method for telecommunications companies to fund such a fund and such a surcharge is required by 4 CSR 240-31.065.

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.

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

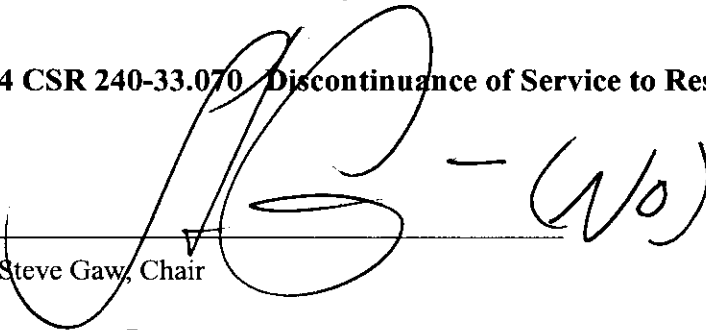
DATE: July 6, 2004

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

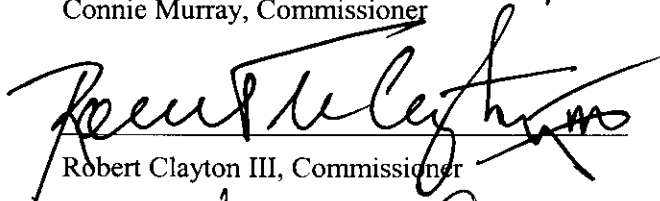
CASE NO: TX-2001-512

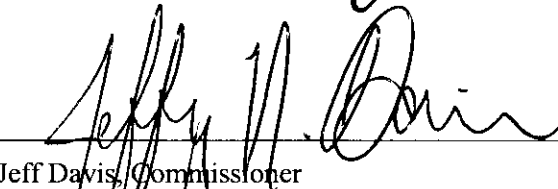
The undersigned Commissioners hereby adopt the final rule listed below and authorize the General Counsel's Office of the Missouri Public Service Commission to file the final rule packet for the rule with the Office of Secretary of State.

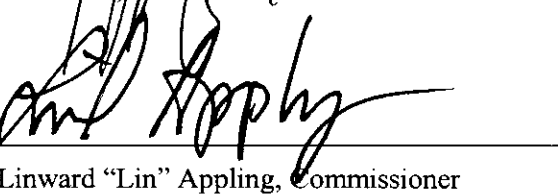
4 CSR 240-33.070 - Discontinuance of Service to Residential Customers


Steve Gaw, Chair


Connie Murray, Commissioner


Robert Clayton III, Commissioner


Jeff Davis, Commissioner


Linward "Lin" Appling, Commissioner