

## MEMORANDUM

**TO:** Steven C. Reed, Secretary

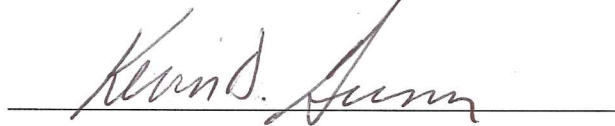
**DATE:** September 4, 2012

**RE:** Authorization to File Final Order of Rulemaking with the Office of Secretary of State

**CASE NO:** TX-2012-0392

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

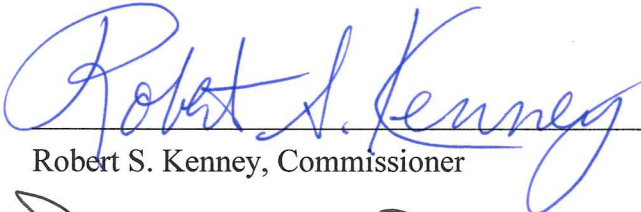
**Proposed Amendment to Rule 4 CSR 240-31.010 – Missouri Universal Service Fund**



Kevin D. Gunn, Chairman



Terry M. Jarrett, Commissioner



Robert S. Kenney, Commissioner



Stephen M. Stoll, Commissioner

# Robin Carnahan

Secretary of State  
Administrative Rules Division

## RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-31.010

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Morris Woodruff Phone 573-751-2849 FAX 573-526-6010

Email address morris.woodruff@psc.mo.gov

Data Entry same

Phone

FAX

Email address

Interagency mailing address Public Service Commission, 9<sup>th</sup> Fl, Gov.Ofc Bldg, JC, MO

### TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☐ Proposed Rulemaking

☐ Withdrawal

☐ Rule Action Notice

☐ In Addition

☐ Rule Under Consideration

☒ Order of Rulemaking

Effective Date for the Order

☒ Statutory 30 days OR Specific date

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☒ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Sections (6) and (11) have been amended.

Small Business Regulatory  
Fairness Board (DED) Stamp

JCAR Stamp





Commissioners

KEVIN GUNN  
Chairman

TERRY M. JARRETT

ROBERT S. KENNEY

STEPHEN M. STOLL

## *Missouri Public Service Commission*

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Secretary/General Counsel

CHERLYN D. VOSS  
Director of Regulatory Review

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

Dear Secretary Carnahan,

Re: 4 CSR 240-31.010 Rulemaking

### 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.

Statutory Authority: section 392.200.2, HB 1779, Second Regular Session, Ninety-fourth General Assembly, 2008, and sections 392.248 and 392.470.1, RSMo 2000.

If there are any questions regarding the content of this order of rulemaking, please contact me at the address and number below.

Sincerely,

Morris Woodruff, Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-2849  
[Morris.woodruff@psc.mo.gov](mailto:Morris.woodruff@psc.mo.gov)

Enclosure

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT  
Division 240 – Public Service Commission  
Chapter 31—Missouri Universal Service Fund**

**ORDER OF RULEMAKING**

By the authority vested in the Public Service Commission under sections 392.200.2 RSMo Supp. 2011, and sections 392.248 and 392.470.1, RSMo 2000 the commission amends a rule as follows:

**4 CSR 240-31.010 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2012 (37 MoReg 1007). 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 public comment period ended August 1, 2012, and the commission held a public hearing on the proposed amendment on August 2, 2012. The commission received timely written comments from the staff of the Missouri Public Service Commission and from Southwestern Bell Telephone Company, d/b/a AT&T Missouri. In addition, the commission's staff and the Office of the Public Counsel offered comments at the hearing.

**COMMENT 1:** The commission's staff explained that the chief purpose of the amendment is to make permanent a federally mandated change in Missouri's income-based eligibility criterion for the Lifeline program to match federal eligibility standards. That change has been temporarily implemented through an emergency rulemaking that is effective June 1, 2012 through February 28, 2013.<sup>1</sup>

**RESPONSE:** The commission thanks its staff for its comment. The commission has made no changes to the rule because of this comment.

**COMMENT 2:** AT&T Missouri offered a written comment indicating its general support for the proposed amendment. However, AT&T Missouri proposes a slight modification to the new definition of "low-income customer" in section (11) of the rule. AT&T proposes to insert the word "household" before "income" in the definition to make it clear that it is household income, not individual income, that determines eligibility to participate in the program. Staff agrees the change is needed to make the definition consistent with federal law and supports the proposed change.

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<sup>1</sup> The emergency rule was published in the Missouri Register on July 2, 2012 (37 Mo. Reg. 1003).



**RESPONSE AND EXPLANATION OF CHANGE:** The commission will insert "household" before "income in the definition of low-income customer found in section (11).

**COMMENT 3:** Public Counsel expressed concern at the hearing about the proposed deletion of the substance of the definition of "essential local telecommunications services" in section (6). The commission proposes to delete that definition and replace it with a reference to the definition of "voice telephony service" in a new section (17). Staff explained that the new definition of "voice telephony service" would make the Commission's rule consistent with regulations for the federal Universal Service Fund as set forth by the Federal Communications Commission (FCC). Public Counsel is concerned that changing the definition of "essential local telecommunications services" in this rule may have ramifications beyond Staff's intent to make the commission's rule correspond to that of the FCC. Public Counsel asks the commission to study the matter more closely before revising the definition.

Staff denied the substance of Public Counsel's concern, but indicated it is currently drafting a broader revision of the commission's rules regarding the Missouri Universal Service Fund. Staff confirmed that the proposed revision of the definition of "essential local telecommunications services" is not related to the emergency amendment of Missouri's income-based eligibility criterion for the Lifeline program, which Staff indicated was the primary purpose of this rulemaking. Therefore, Staff conceded that the commission could defer making a change to the definition until it considers the upcoming overall revision of the commission's rules.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission will not change the definition of essential local telecommunications service in this rulemaking. In doing so, the commission is not making any decision regarding the merits of the change proposed by Staff or the position taken by Public Counsel. Rather, it is deferring that decision until the matter is again presented as part of the upcoming broader revision of the Missouri Universal Service Fund rules. Staff explained that if the commission chose to not amend the definition of "essential local telecommunications services" at this time, it could best do so by not deleting the existing section (6) and by deleting the proposed new section (17)'s definition of "voice telephony services". The Commission will revise its rulemaking as Staff suggests.

**COMMENT 4:** In its written comment, AT&T Missouri proposed a revision to the definition of "voice telephony services" to make it fully consistent with the federal definition.

**RESPONSE:** Since the Commission decided in response to comment 3 to delete the definition of "voice telephony services" from the rule, it will not make the change proposed by AT&T Missouri.

#### **4 CSR 240-31.010 Definitions.**

(6) Essential local telecommunications services—Two (2)-way switched voice residential service within a local calling scope as determined by the commission, comprised of the following services and their recurring charges:

(A) Single line residential service, including Touch-Tone dialing, and any applicable mileage or zone charges;

(B) Access to local emergency services including, but not limited to, 911 service established by local authorities;

(C) Access to basic local operator services;

(D) Access to basic local directory assistance;

(E) Standard intercept service;

(F) Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission (FCC);

(G) One (1) standard white pages directory listing; and

(H) Toll blocking or toll control for qualifying low-income customers.

(11) Low-income customer—Any customer who requests or receives residential essential local telecommunications service and whose household income, as defined in section (9) above, is at or below one hundred thirty-five percent (135%) of the Federal Poverty Guidelines or who participates or has a dependent residing in the customer's household who participates in a program pursuant to 42 U.S.C. sections 1396–1396v, food stamps (7 U.S.C. section 51), Supplementary Security Income (SSI) (42 U.S.C. section 7), federal public housing assistance or Section 8 (42 U.S.C. section 8), National School Lunch Program's free lunch program (42 U.S.C. section 13), Temporary Assistance for Needy Families (42 U.S.C. section 7(IV)), or Low Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. section 94).