

COPY

**MATT BLUNT**  
**Secretary of State**  
**Administrative Rules Division**  
**RULE TRANSMITTAL**

\*Administrative Rules Stamp

**RECEIVED**

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 240-33.040  
Diskette File Name Final Rule 33.040  
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 33.040

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 240-33.040, Section four (4) has been modified.**

**In Section four (4), the commission added the text “electronic communications to customers that have authorized receipt of electronic notification,” in the fifth sentence.**

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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**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 240-33.040  
Billing and Payment Standards for Residential Customers

**CERTIFICATION OF ADMINISTRATIVE RULE**

I hereby certify that the attached is an accurate and complete copy of the proposed rescission lawfully submitted by the Missouri Public Service Commission for filing on this 6<sup>th</sup> 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](mailto:david.meyer@psc.mo.gov)

BY THE COMMISSION

A stylized, handwritten signature in black ink, likely belonging to Dale Hardy Roberts.

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 240-33.040 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 376-77). 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. Seven (7) 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; Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri; R. Matthew Kohly, state director, government affairs, AT&T; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, filed or concurred in comments recommending the addition of electronic mail to section (4) as an acceptable form of customer notice. At the public hearing, SBC Missouri clarified it intended the addition of the words "electronic communication" and that it preferred that term to "electronic mail." Also at the public hearing, the commission's staff stated that the staff had no objection to this additional form of customer notice as long as the customer had previously authorized electronic notification.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission has considered the comments and agrees that the addition of "electronic communication" to the list of acceptable forms of customer notice is appropriate for customers who have previously authorized electronic notification.

COMMENT: R. Matthew Kohly, state director, government affairs, AT&T, filed a written comment that the proposed requirement in section (4) to notify all presubscribed customers of an increase in rates for any service available to a presubscribed customer is overly broad and unnecessarily burdensome. At the public hearing, SBC Missouri agreed with this position. Natelle Dietrich of the commission's staff and Michael Dandino of the Office of the Public Counsel testified that they disagreed with the suggestion that the proposed requirement was overly broad and unnecessarily burdensome. Natelle Dietrich of the commission's staff testified that the proposed rule codified the current commission practice of requiring customer notice to all pre-subscribed customers on all pre-subscribed services of rate increases. Michael Dandino of the Office of the Public Counsel testified that presubscribed customers should receive notice of all rate changes because by presubscribing to a company, there is a higher likelihood the customer will use that company for other telecommunications services.

RESPONSE: The commission finds that the requirement to notify presubscribed customers of rate increases in writing is not overly broad and unnecessarily burdensome, and declines to incorporate the suggested modifications. Residential customers should receive notice when presubscribed service rates increase, and section 392.500(2) RSMo, also calls for this type of customer notice.

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 240-33.040 Billing and Payment Practices for Residential Customers**

(4) A company proposing to increase rates for a regulated telecommunications service must provide at least ten (10) days advance written notice, or thirty (30) days advance written notice in the case of a small telephone company as defined in Section 392.230.5 RSMo, to affected customers with whom the company has an on-going business relationship. This requirement includes written notification to a presubscribed customer if a company proposes to increase rates for any service available to the presubscribed customer. Increases in billing increments are considered rate increases and are subject to Section 392.500, RSMo. Written notification must be provided to the presubscribed customer for services available to that presubscribed customer but billed to another party such as collect calls or calls billed to a third number. Bill inserts, bill messages, electronic communications to customers that have authorized receipt of electronic notification, and direct mailings are acceptable forms of customer notice. Written notification is not required if the affected service with the proposed rate increase regularly announces the

applicable rate prior to each time the customer uses the service. Written notification is also not required if the affected service is solely provided to the transient or casual calling customer.

## 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.

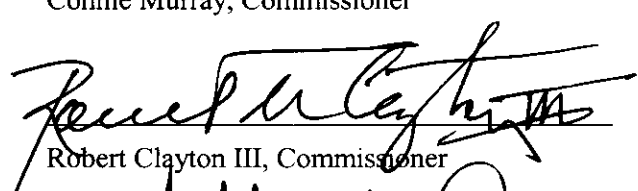
**4 CSR 240-33.040 Billing and Payment Practices for Residential Customers.**



Steve Gaw, Chair



Connie Murray, Commissioner



Robert Clayton III, Commissioner



Jeff Davis, Commissioner



Linward "Lin" Appling, Commissioner