

MATT BLUNT
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

*Administrative Rules Stamp

RECEIVED
COPY
MAR 19 2004

SECRETARY OF STATE
ADMINISTRATIVE RULES

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

A. Rule Number 4 CSR 240-3.520
Diskette File Name Proposed Amendment 3.520
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 386.250 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 checked="" type="checkbox"/> Authority with history of the rule |
| <input checked="" type="checkbox"/> Affidavit | <input checked="" type="checkbox"/> Public cost |
| <input type="checkbox"/> Forms, number of pages _____ | <input checked="" type="checkbox"/> Private cost |
| <input checked="" type="checkbox"/> Fiscal notes | <input checked="" 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).

JCAR Stamp

E. ORDER OF RULEMAKING: Rule Number _____

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

KELVIN L. SIMMONS

BRYAN FORBIS

ROBERT M. CLAYTON III

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

DONNA M. PRENGER
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

November 12, 2003

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Re: Proposed Amendments to Rules 4 CSR 240-3.020, 4 CSR 240-3.510,
4 CSR 240-3.520, and 4 CSR 240-3.525
No. TX-2003-0380

Dear Mr. Roberts:

Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rule or regulation in light of the United States Supreme court decision in *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992). Pursuant to that order, I have undertaken a "takings analysis" of the above-referenced proposed rulemaking. In *Lucas*, the Court held that state regulation depriving a real property owner of all economically beneficial use of that real property constitutes a "taking" under the Fifth and Fourteenth Amendments of the U.S. Constitution, for which the property owner must be compensated. The Court also held that when state regulations compel a property owner to suffer a permanent physical invasion of his/her property, such an invasion is compensable.

The proposed amendments modify the Commission's filing requirements for telecommunications company applications for certificates of service authority; for authority to sell, assign, lease or transfer assets; or for authority to merge or consolidate. The amendments also clarify the location of filing requirements for utility name changes that apply to all Commission-regulated utilities.

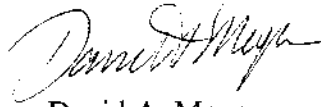
The proposed rule amendments do not implicate the takings clause of the U.S. Constitution, because they do not involve the taking of real property.

November 12, 2003

Page 2

Please let me know if you have any questions on this issue.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "David A. Meyer".

David A. Meyer
Associate General Counsel
(573) 751-8706
(573) 751-9285 (Fax)



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November 19, 2003

Mr. Joseph L. Driskill, Director
Department of Economic Development
301 West High Street
Jefferson City, MO 65102

Re: Proposed Amendments to Rules 4 CSR 240-3.020, 4 CSR 240-3.510,
4 CSR 240-3.520, and 4 CSR 240-3.525
No. TX-2003-0380.

Dear Mr. Driskill:

The Public Service Commission proposes to publish proposed amendments to Rules 4 CSR 240-3.020, 4 CSR 240-3.510, 4 CSR 240-3.520, and 4 CSR 240-3.525. These rule modifications are designed to address filing requirements, primarily for telecommunications companies.

Specifically, the amendments to 4 CSR 240-3.020 update cross-references to other Commission rule sections that set forth requirements for any regulated utility to change its name. The amendments to 4 CSR 240-3.510 incorporate an existing Commission requirement for basic local exchange telecommunications service applicants. The amendments to 4 CSR 240-3.520 and 3.525 remove certain waivers previously granted to competitive telecommunications companies, to enable the Commission to complete a more effective and timely review of applications to sell, assign, lease or transfer assets, or to merge or consolidate.

Please find enclosed a copy of each of the proposed amendments as well as a Public Entity Cost Affidavit for each proposed amendment for your signature. Copies of a "takings analysis" required by Executive Order 93-13 and a "small business impact analysis" required by Executive Order 03-15 are also enclosed for your information, as well as our fiscal note analysis for private entity cost, if any. Please review and sign the Affidavits at your earliest convenience so that the Commission may proceed with publication.

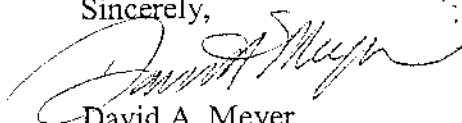
When the Affidavits have been completed, please contact me at 751-8706 and I will arrange for them to be picked up.

November 19, 2003

Page 2

If you have any questions, please feel free to call me.

Sincerely,

A handwritten signature in dark ink, appearing to read "David A. Meyer", is written over the typed name.

David A. Meyer

Associate General Counsel

(573) 751-8706

(573) 751-9285 (Fax)

Enclosures:

- Proposed amended rules accompanied by Public entity cost affidavits (unsigned) (4)
- "takings analysis" (4; one attached to each of the four proposed amended rules)
- "small business impact analysis" (1)



Commissioners

STEVE GAW
Chair

CONNIE MURRAY

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Director, Utility Services

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

March 19, 2004

Missouri Small Business Regulatory Fairness Board
c/o Department of Economic Development
301 West High Street, Room 680
Jefferson City, MO 65102-1157

Re: Proposed Amendment to Rule 4 CSR 240-3.520, Filing Requirements for
Telecommunications Company Applications for Authority to Sell, Assign, Lease or Transfer
Assets

Small Business Impact Statement

No. TX-2003-0380

Dear Sir or Madam:

Executive Order 03-15, Section 2, requires, among other things, that state agencies determine whether a proposed rule or rules affect small businesses. If the Public Service Commission determines that its proposed rule or rules affect small businesses by causing a direct and significant economic burden, it must then prepare a small business impact statement for submission to the Secretary of State.

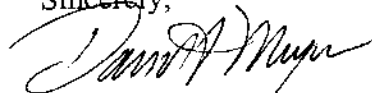
In consultation with the staff of the Public Service Commission, I have undertaken an analysis of whether the proposed rule amendment addressing telecommunications company filing requirements affects small businesses. I have determined that the proposed rule amendment listed above will have an affect upon small businesses in a direct and significant manner, or that it directly relates to the formation, operation or expansion of a small business.

The rule amendment listed above is designed to update the Commission's rule that contains filing requirements for telecommunications companies that seek authority to sell, assign, lease or transfer assets as required by Chapter 392. The following statements contain the determinations as required by the Executive Order:

1. Small businesses bearing costs will be competitive telecommunications companies. Competitive telecommunications company is defined at Section 386.020(9) as “a telecommunications company which has been classified as such by the commission pursuant to section 392.361, RSMo.”
2. Competitive telecommunications companies seeking Commission authority to sell, assign, lease or transfer assets will now have to provide items currently waived by Commission rule, as the amendment removes certain waivers. By removing the waivers, these companies may incur additional processing costs such as the need to obtain additional attorney review. Additionally, the Commission now will require a copy of customer notification documents in its rules, though the Commission’s Staff previously requested these documents from applicants after the application was filed.
3. The Commission’s Staff estimates that a company subject to the amended rule may bear an indirect cost of \$1,300 for each company, with five applications filed under this rule on an annual basis; thus, the annualized cost of this rule is \$6,500. Not all applications are expected to come from small businesses.
4. The Commission will receive the benefit of having additional information to review as a part of applications for any impact on Missouri consumers, and will no longer need to request supplemental submissions.
5. The Commission has modified its proposed amendment by reinstating the waiver to subsection (2)(E) for competitive telecommunications companies, a waiver initially eliminated, to reduce the impact on small businesses.
6. The Commission Staff sent proposed rule language to representative industry and attorney contacts to obtain fiscal impact feedback.
7. There are no comparable rules on the federal state or county level other than the Commission’s related rules (and associated proposed amendments) at 4 CSR 240-3.525, 4 CSR 240-3.530 and 4 CSR 240-3.535.

Please let me know if you have any questions based upon the foregoing.

Sincerely,



David A. Meyer
Associate General Counsel
(573) 751-8706
(573) 751-9285 (Fax)



Commissioners

STEVE GAW
Chair

CONNIE MURRAY

ROBERT M. CLAYTON III

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DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

March 18, 2004

Hon. Matt Blunt
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt,

Re: Proposed Amendment to Rule 4 CSR 240-3.520
Filing Requirements for Telecommunications Company Applications for Authority to Sell,
Assign, Lease or Transfer Assets..

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 18th day of March 2004.

The Missouri Public Service Commission has determined and hereby certifies that this proposed amendment will have an economic impact on small businesses. The Missouri Public Service Commission also certifies that it has conducted an analysis of whether or not there has been a taking of real property pursuant to section 536.017 RSMo 2000 and that this proposed amendment does not constitute a taking of real property under relevant state and federal law.

Statutory Authority: Section 386.250 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 'DHR', with a long horizontal stroke extending to the right.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

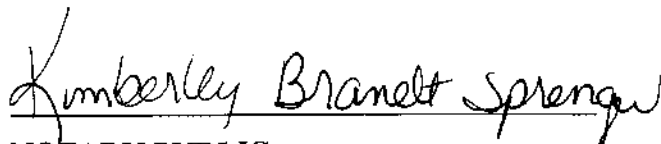
AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Anne Walker, Deputy Director of the Department of Economic Development, first being duly sworn on my oath state that it is my opinion that the cost of the **Proposed Amendment to 4 CSR 240-3.520, Filing Requirements for Telecommunications Company Applications for Authority to Sell, Assign, Lease or Transfer Assets**, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.


Anne Walker
DEPUTY DIRECTOR
Department of Economic Development

Subscribed and sworn to before me this 10th day of March, 2004.
I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on April 29, 2006.


NOTARY PUBLIC

KIMBERLEY BRANTT SPRENGER
NOTARY PUBLIC STATE OF MISSOURI
COLE COUNTY
MY COMMISSION EXPIRES APRIL 29, 2006

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: Missouri Department of Economic Development
Division: Missouri Public Service Commission
Chapter: Filing and Reporting Requirements
Type of Rulemaking: Revision
Rule Number and Name: 4 CSR 240-3.520 Filing Requirements for Telecommunications
Company Applications for Authority to Sell, Assign, Lease or
Transfer Assets

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 cost of compliance with the rule by the affected entities:
0	Class A Local Telephone Companies	\$0
0	Class B Local Telephone Companies	\$0
1	Class C Local Telephone Companies	\$1,300
4	Class Interexchange Companies	\$5,200
	All entities	\$6,500

* 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 all other companies certificated to provide basic local exchange telecommunications services, Class Interexchange Companies are long distance providers.

III. WORKSHEET

1. The proposed rule applies to all classes of telecommunications companies requesting authority from the Missouri Public Service Commission to sell, assign, lease or transfer assets.
2. The estimated number of entities affected by the proposed rule is annualized based on the number of companies requesting such authority over the past 3 fiscal years.
3. The aggregate impact of the cost to comply with the proposed rule change is based on an average \$1300 estimated increase in the costs to process the additional filing requirements associated with each transaction submitted pursuant to the proposed rule change.
4. The average estimated increase in costs was calculated based on information provided by industry representatives.
5. Industry representatives further indicated, proposed fiscal impact could be as much as \$500,000 per transaction in penalties for missing merger agreement conditions and because of delays in obtaining funding as a result in delays related to gathering and reviewing the documents to satisfy the additional filing requirements.

IV. ASSUMPTIONS

1. Fiscal year 2003 dollars were used to estimate costs. No adjustment for inflation is applied.
2. Estimates assume no sudden change in technology that would influence costs.
3. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission rules and regulations.

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 3 – Filing and Reporting Requirements**

RECEIVED

MAR 19 2004

**SECRETARY OF STATE
ADMINISTRATIVE RULES**

PROPOSED AMENDMENT

4 CSR 240-3.520 Filing Requirements for Telecommunications Company Applications for Authority to Sell, Assign, Lease or Transfer Assets. The Public Service Commission is amending section (1) and (2) to remove current exemptions.

PURPOSE: This amendment removes current exemptions for competitive companies and incorporates current customer notice requirements.

(1) Competitive telecommunications companies are exempt from subsections (2)[(A)-(E)](C) **and (E)** of this rule; *however, they must file a pleading indicating which company will be holding the certificate of service authority and providing service to Missouri customers, and the tariff under which service will be provided*].

(2) In addition to the requirements of 4 CSR 240-2.060(1), applications for authority to sell, assign, lease or transfer assets shall include:

(A) A brief description of the property involved in the transaction, including any franchises, permits, operating rights or certificates of convenience and necessity;

(B) A copy of the contract or agreement of sale;

(C) The verification of proper authority by the person signing the application or a certified copy of the resolution of the board of directors of each applicant authorizing the proposed action;

(D) The reasons the proposed sale of the assets is not detrimental to the public interest;

(E) If the purchaser is subject to the jurisdiction of the commission, a balance sheet and income statement with adjustments showing the results of the acquisitions of the property;

(F) A statement of the impact, if any, the sale, assignment, lease or transfer of assets will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the companies involved in that sale are located;

(G) **A copy of the customer notification to be provided to any customers who will receive service from a different telecommunications company, informing them of the transaction. Such notice shall inform customers of:**

1. The name of the company that will be providing service after the sale, assignment, lease or transfer of assets is complete;

2. The name, address and contact information for the new telecommunications company;

3. The right to transfer their service to another provider as a result of the sale, assignment, lease or transfer of assets; and,

4. Where to go to locate other carriers providing service in the area.

AUTHORITY: section 386.250, RSMo 2000. Original rule filed May 1, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule is estimated to cost private entities approximately six thousand five hundred dollars (\$6,500) annually for the life of the rule. It is anticipated that the total costs will recur annually for the life of the rule and may vary with inflation. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices within thirty (30) days after the publication of this notice in the Missouri Register, and should include a reference to Commission Case No. TX-2003-0380. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <<http://www.psc.mo.gov/efis.asp>>. A public hearing regarding this proposed rule is scheduled for June 4, 2004, at 10:00 A.M. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or Relay Missouri at 7-1-1.

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

DATE: March 18, 2004

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

CASE NO: TX-2003-0380

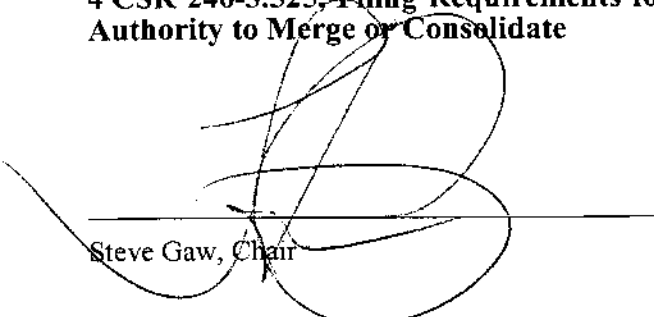
The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Proposed Amendments with the Office of Secretary of State, to wit:

4 CSR 240-3.020, Filing Requirements Regarding Utility Company Name Changes

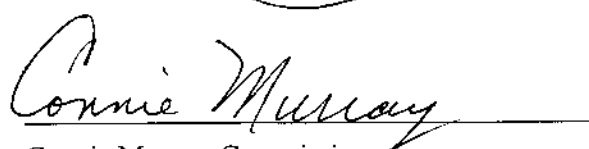
4 CSR 240-3.510, Filing Requirements for Telecommunications Company Applications for Certificates of Service Authority to Provide Telecommunications Services, Whether Interexchange, Local Exchange or Basic Local Exchange

4 CSR 240-3.520, Filing Requirements for Telecommunications Company Applications for Authority to Sell, Assign, Lease or Transfer Assets

4 CSR 240-3.525, Filing Requirements for Telecommunications Company Applications for Authority to Merge or Consolidate



Steve Gaw, Chair



Connie Murray, Commissioner



Robert Clayton III, Commissioner