

MATT BLUNT
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

*Administrative Rules Stamp

RECEIVED

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 240-3.510
Diskette File Name Proposed Amendment 3.510
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 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.

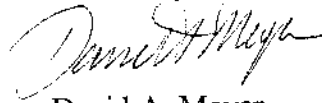
The proposed rule amendments do not implicate the takings clause of the U.S. Constitution, because they do not involve the taking of real property.

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)



Commissioners

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Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

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.

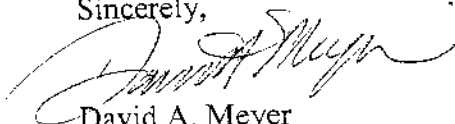
Specifically, the amendments to 4 CSR 240-3.020 update cross-references to other Commission rule sections that set forth requirements for any regulated utility to change its name. The amendments to 4 CSR 240-3.510 incorporate an existing Commission requirement for basic local exchange telecommunications 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.

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

Sincerely,

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)

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 Amendments to Rule 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
No. TX-2003-0380

Dear Sir or Madam:

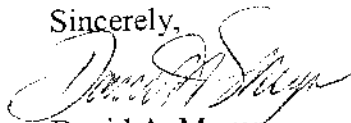
Executive Order 03-15, Section 2, requires, among other things, that state agencies determine whether a proposed rule or rules affect small businesses. If the Public Service Commission determines that its proposed rule or rules affect small businesses by causing a direct and significant economic burden, 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 modifications updating the Commission's filing requirements for certificates of service authority affect small businesses. I have determined that the proposed rule modifications do not affect small businesses in a direct and significant manner, nor do they directly relate to the formation, operation or expansion of a small business.

The amendments to the rule set forth additional filing requirements for applicants seeking basic local exchange service authority. The amendments incorporate existing requirements not previously documented in a Commission regulation. Thus, no small businesses will be required to do anything beyond what they are already required to do as a result of the additional language, and the amendments will not have any direct and significant economic burden upon small businesses. Therefore, preparation of a formal small business impact statement is not required in this matter.

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

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Meyer", written in a cursive style.

David A. Meyer

Associate General Counsel

(573) 751-8706

(573) 751-9285 (Fax)



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Chair

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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 240-3.510

Filing Requirements for Telecommunications Company Applications for Certificates of Service Authority to Provide Telecommunications Services, Whether Interexchange, Local Exchange or Basic Local Exchange.

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 not 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 'Dale Hardy Roberts', with a long, sweeping horizontal stroke extending to the right.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

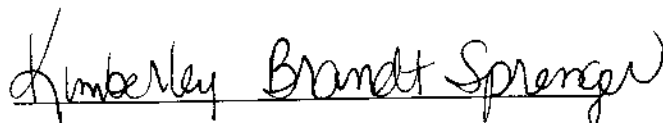
AFFIDAVIT

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 240-3.510, Filing Requirements for Telecommunications Company Applications for Certificates of Service Authority to Provide Telecommunications Services, Whether Interexchange, Local Exchange or Basic Local Exchange**, 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 18th 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 BRANDT SPRENGER
NOTARY PUBLIC - MISSOURI
COLE COUNTY
MY COM. EXPIRES 4/29/2006

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 240-3.510 Filing Requirements for Telecommunications Company Applications for Certificates of Service Authority to Provide Telecommunications Services, Whether Interexchange, Local Exchange or Basic Local Exchange. The Public Service Commission is amending section (1) to codify current filing requirements that are not in the existing rule.

PURPOSE: This amendment incorporates current filing requirements for applications requesting that the commission grant a certificate for providing telecommunications services, whether interexchange, local exchange or basic local exchange services.

(1) In addition to the requirements of 4 CSR 240-2.060(1), applications for a certificate of service authority to provide telecommunications services, whether interexchange, local exchange or basic local exchange, shall include:

(A) A request to be classified as a competitive telecommunications company, if applicable, and a description of the types of service the applicant intends to provide;

(B) If the application is for basic local exchange service authority, the applicant shall indicate the exchange(s) in which service is to be offered;

(C) A proposed tariff with an effective date which is not fewer than forty-five (45) days after the tariff's issue date. **Before service can be provided, a tariff and any applicable interconnection agreements must be filed with the Commission and approved. However, filing the tariff and any applicable interconnection agreements simultaneously with the certificate application is optional.**

(D) If the application is for basic local exchange service authority, the application shall also include the following:

1. A statement that the applicant possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

A. The application shall contain supportive financial information that includes twelve (12) months of historical financial statements comprised of a balance sheet and an income statement for any applicant that has been engaged in previous business operations and any company that will be providing financial support to the applicant. Entities with no prior business operations or any relationship with a company that will be providing financial support to the applicant will not be expected to provide any historical financial information.

B. Applicant shall submit on a pro forma basis, at least twelve (12) months of financial statements comprised of a balance sheet and an income statement.

C. Financial data shall reflect Missouri specific information to the extent such information is available. Company-wide financial information may be substituted in the event that Missouri specific information is not available.

D. Pro forma financial information must demonstrate the following:

(I) The applicant has a debt to total capital ratio no greater than 62% and a pretax interest coverage of at least 2.3x and/or

(II) The applicant has a cash or cash equivalent balance of at least four months operating expenses inclusive of interest expense and taxes.

(a) If the pro forma for the applicant demonstrates the requirement set forth in subparagraph D above, only the pro forma for the applicant need be submitted. If the pro forma for the applicant does not demonstrate the requirement in subparagraph D, the applicant must submit a combined pro forma for the applicant and the company that will be providing support for the applicant, that meets the requirement in subparagraph D.

(b) If any of the items required under this rule have been submitted by applicant in a previous application within a year of this application, the same may be incorporated by reference to the case number in which the information was furnished, so long as such applicable information is current and correct.

2. A statement that the applicant will satisfy the minimum standards established by the commission.

3. A statement that sets forth the geographic area in which the applicant proposes to offer service and demonstrates that such area follows exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange.

4. A statement that the applicant will offer basic local telecommunications service as a separate and distinct service.

5. A statement that the applicant will give equitable access to all Missourians, regardless of where they live or their income, to affordable telecommunications services.

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 will not cost private entities more than five hundred dollars (\$500) in the aggregate.

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

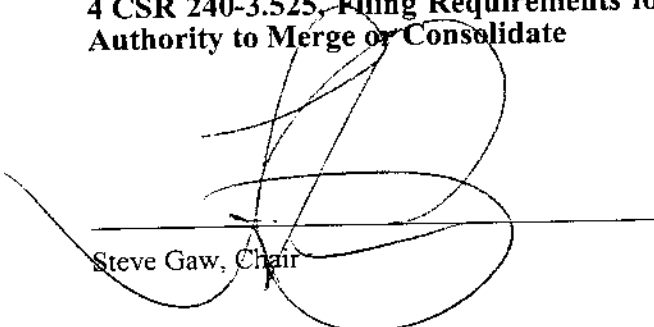
The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Proposed Amendments with the Office of Secretary of State, to wit:

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

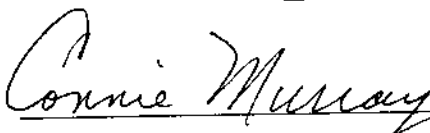
4 CSR 240-3.510, Filing Requirements for Telecommunications Company Applications for Certificates of Service Authority to Provide Telecommunications Services, Whether Interexchange, Local Exchange or Basic Local Exchange

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

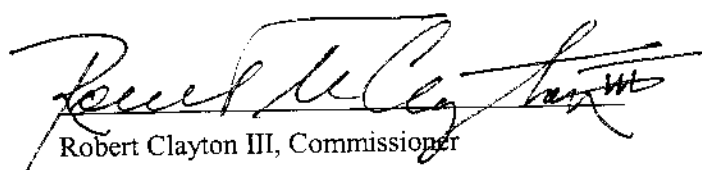
4 CSR 240-3.525, Filing Requirements for Telecommunications Company Applications for Authority to Merge or Consolidate



Steve Gaw, Chair



Connie Murray, Commissioner



Robert Clayton III, Commissioner