



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>
September 12, 2003

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

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

Re: No Public Cost Affidavit for
Proposed Rules 4 CSR 240-36.010 to 36.080
Public Service Commission Arbitration Rules for *Telecommunications Act of 1996*
MoPSC Case No. TX-2003-0487

Dear Mr. Driskill:

To address procedures used for review of interconnection agreements under the *Telecommunications Act of 1996*, the Public Service Commission proposes to publish Proposed Rules 4 CSR 240-36.010, **Definitions**; 4 CSR 240-36.020, **Filing Procedures**; 4 CSR 240-36.030, **Mediation**; 4 CSR 240-36.040, **Arbitration**; 4 CSR 240-36.050, **Commission Approval of Agreements Reached by Arbitration**; 4 CSR 240-36.060, **Commission Approval of Agreements Reached by Voluntary Mediation or Negotiation**; 4 CSR 240-36.070, **Commission Notice of Adoption of Previously Approved Agreement**; 4 CSR 240-36.080, **Commission Approval of Amendments to Agreements Approved or Adopted Under These Rules**.

Please find enclosed:

- (1) an affidavit regarding public entity costs for these proposed rules;
- (2) a "takings" analysis; and
- (3) a copy of each of the proposed rules.

The Commission has performed the small business analysis required by Executive Order 03-15 and plans to include the language following in the transmittal letter to the Secretary of State for the proposed rules:

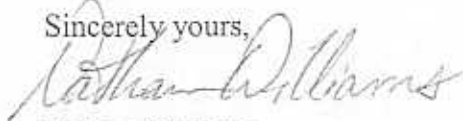
Executive Order 03-15 requires state agencies to "determine whether the proposed rules affect small businesses and, if so, the availability and practicability of less restrictive alternatives that could be implemented to achieve the same results of the proposed rule." A small business is defined to be "a for-profit enterprise consisting of fewer than fifty (50) full or part-time employees." A proposed rule "affects" a small business if it "imposes any requirement" that "will cause direct and significant economic

burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.”

Proposed rules 4 CSR 240-36.010 through 4 CSR 240-36.080 state procedures for Public Service Commission review of interconnection agreements made under the *Telecommunications Act of 1996*, in particular, 47 U.S.C. § 252. Because these rules do not impose any requirement that “will cause direct and significant economic burden upon a small business, or [that] is directly related to the formation, operation, or expansion of a small business,” the Commission certifies that it has determined that the proposed rules will not have an economic impact on small businesses.

Please let me know if you have any questions concerning these proposed rules.

Sincerely yours,

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

Nathan Williams

Senior Counsel

(573) 751-8702

(573) 751-9285 (Fax)

nathanwilliams@psc.state.mo.us (E-Mail)

Enclosures.

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

THROUGH: Dan Joyce

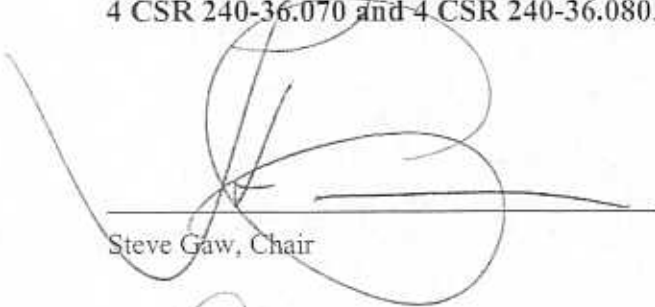
FROM: Nathan Williams

DATE: December 30, 2003


SUBJECT: Authorization to File Proposed Rulemakings with the Office of the Secretary of State.

Case No. TX-2003-0487


The undersigned Commissioners hereby authorize the General Counsel's Office of the Missouri Public Service Commission to file the following Proposed Rulemakings with the Office of the Secretary of State, to wit: 4 CSR 240-36.010, 4 CSR 240-36.020, 4 CSR 240-36.030, 4 CSR 240-36.040, 4 CSR 240-36.050, 4 CSR 240-36.060, 4 CSR 240-36.070 and 4 CSR 240-36.080.



Steve Gaw, Chair



Connie Murray, Commissioner



Robert M. Clayton, Commissioner

MATT BLUNT
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

*Administrative Rules Stamp

RECEIVED
DEC 30 2003

SECRETARY OF STATE
ADMINISTRATIVE RULES

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

A. Rule Number 4 CSR 240-36.030
Diskette File Name Proposed Rule 4 CSR 240-36.030
Name of Person to call with questions about this rule:
Content Nathan Williams Phone 573-751-8702 FAX 573-751-9285
Data Entry Nathan Williams Phone 573-751-8702 FAX 573-751-9285
Email Address nathan.williams@psc.mo.gov
Interagency Mailing Address Governor Office Building, 200 Madison St., 8th Floor, Jefferson City, MO
Statutory Authority 386.410 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 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

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Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

December 30, 2003

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

Dear Secretary Blunt,

RE: 4 CSR 240-36.030 Mediation

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rule lawfully submitted by the Missouri Public Service Commission on this thirtieth day of December 2003.

Executive Order 03-15 requires state agencies to "determine whether the proposed rules affect small businesses and, if so, the availability and practicability of less restrictive alternatives that could be implemented to achieve the same results of the proposed rule." A small business is defined to be "a for-profit enterprise consisting of fewer than fifty (50) full or part-time employees." A proposed rule "affects" a small business if it "imposes any requirement" that "will cause direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business."

Proposed rule 4 CSR 240-36.030 is part of a group of rules—4 CSR 240-36.010 through 4 CSR 240-36.080—that state procedures for Public Service Commission review of interconnection agreements made under the *Telecommunications Act of 1996*, in particular, 47 U.S.C. § 252. Because proposed rule 4 CSR 240-36.030 will not impose any requirement that "will cause direct and significant economic burden upon a small business, or [that] is directly related to the formation, operation, or expansion of a small business," the Commission certifies that it has determined that the proposed rule 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 final rule does not constitute a taking of real property under relevant state and federal law.

Statutory Authority: Sections 386.410 RSMo 2000.

If there are any questions regarding the content of the rule, please contact:

December 30, 2003

Page 2

Nathan Williams
200 Madison Street, Suite 800
P. O. Box 360
Jefferson City, MO 65101
(573) 751-8702
nathan.williams@psc.mo.gov

Sincerely yours,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Public Service Commission
State of Missouri

DHR:NW:

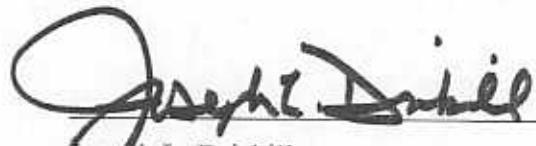
Enclosures: Transmittal Form, Cover Letter, Public Entity no cost affidavit, Proposed Rule & 3.5" Diskette

cc: Missouri Small Business Regulatory Fairness Board

AFFIDAVIT


STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Joseph L. Driskill, Director of the Department of Economic Development, first being duly sworn on my oath state that it is my opinion that the cost of proposed rule 4 CSR 240-36.030—**Mediation** is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

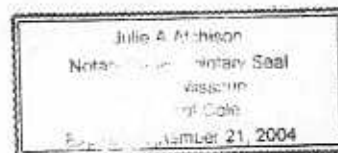


Joseph L. Driskill
DIRECTOR
Department of Economic Development

Subscribed and sworn to before me this 15th day of December, 2003.
I am commissioned as a notary public within the County of
Cole, State of Missouri, and my commission expires on
September 21, 2004.



NOTARY PUBLIC



Title 4--DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 240--Public Service Commission
Chapter 36 - Alternative Dispute Resolution Procedural Rules Governing Filings
Made Pursuant to the Telecommunications Act of 1996

PROPOSED RULE

4 CSR 240-36.030 Mediation

PURPOSE: This rule provides the procedures for requesting and conducting mediations.

(1) Who may Request Mediation—A party engaged in a negotiation for interconnection, services, or unbundling of network elements under section 252 of the Act may request that the commission mediate unresolved issues. The request shall identify all parties to the negotiation and any time constraints on resolution of the issues.

(2) Appointment of Mediator—Upon receipt of a request for mediation, the commission, or its designee, shall determine whether all parties to the negotiation agree to mediation. In the event all parties agree to mediation, the Commission shall appoint a mediator. The mediator shall be a commissioner or employee of the commission unless the parties consent to the appointment of an outside mediator. The costs of an outside mediator shall be borne equally by the parties. The mediator shall be disqualified from participating as an arbitrator or presiding officer in subsequent proceedings regarding the same negotiation. Presiding officer is defined in 4 CSR 240-2.120.

(3) Parties' Statements—Within fifteen (15) days after the filing of a request for mediation, each party to the negotiation shall submit a written statement to the mediator summarizing the dispute, and shall furnish such other material and information it deems appropriate to familiarize the mediator with the dispute. The mediator may require any party to provide supplemental material or information.

(4) Initial Mediation Conference—Within ten (10) days after the filing of the parties' statements, the mediator shall convene an initial conference. At the initial conference, the parties and mediator shall discuss a procedural schedule, and attempt to identify, simplify and limit the issues to be resolved. Each party should be prepared to informally present its position and arguments to the mediator at the initial mediation conference.

(5) Conduct of the Mediation—The mediator, subject to the rules contained herein, shall control the procedural aspects of the mediation.

(6) Mediations Closed to the Public—To provide for effective mediation, participation in a mediation is strictly limited to the parties involved in the negotiation of the agreement contemplated by sections 251 and 252 of the Act that is the subject of the mediation. All mediation proceedings shall remain closed to the public.

(7) Caucusing—The mediator is free to meet and communicate separately with each

party. The mediator shall decide when to hold such separate meetings. The mediator may request that there be no direct communication between the parties or between their representatives regarding the dispute without the concurrence of the mediator.

(8) Joint Meetings—The mediator shall decide when to hold joint meetings with the parties and shall fix the time and place of each meeting and the agenda thereof. Formal rules of evidence shall not apply to these meetings or any portion of the mediation proceeding.

(9) No Stenographic Record—No record, stenographic or otherwise, shall be taken of any portion of the mediation proceeding.

(10) Exchange of Additional Information—If any party has a substantial need for documents or other material in the possession of another party, the parties shall attempt to agree on the exchange of requested documents or other material. Should they fail to agree, either party may request a joint meeting with the mediator who shall assist them in their effort to reach an agreement. The parties may enter into nondisclosure agreements. At the conclusion of the mediation process, upon the request of the party that provided the documents or other material to one or more of the mediating parties the recipients shall return such documents or material to the originating party without retaining copies thereof.

(11) Request for Further Information by the Mediator—The mediator may request any mediating party to provide clarification and additional information necessary to assist in the resolution of the dispute.

(12) Responsibility of the Parties to Negotiate and Participate—Parties are expected to initiate proposals for resolution of the dispute, including proposals for partial resolution. Each party is expected to be able to provide to the mediator that party's justification for the terms of any resolution that it proposes.

(13) Authority of the Mediator—The mediator does not have authority to resolve the dispute, but the mediator shall help the parties attempt to reach a mutually satisfactory resolution. At any time during the mediation, the mediator may recommend to the parties only, oral or written proposals for resolution of the dispute, in whole or in part.

(14) Reliance by Mediator Upon Experts—The mediator may use the services of and rely on experts retained by, or employed by, the Commission for purposes of the mediation. Other than subsequent mediations, if any, such experts shall not participate, directly or indirectly, in any subsequent proceedings regarding the same negotiation. The mediator shall disclose to the parties the identities of all experts that provide any services to the mediator for purposes of the mediation.

(15) Impasse and Recommended Resolution of Mediator—In the event that the parties fail to resolve their dispute, the mediator, before terminating the mediation, shall submit to all of the parties a final proposed resolution that addresses all or part of the disputed issues. Each party shall advise the mediator within ten (10) days of the date the mediator

issues the proposed resolution as to whether the party accepts the mediator's proposed resolution.

(16) Termination of the Mediation—Any of the following events shall terminate the mediation:

- (A) the mediating parties execution of an agreement that resolves all disputed issues;
- (B) written service by a party on the mediator and other parties of a declaration that the mediation proceedings are terminated; or
- (C) the mediator's submission to the parties and the Commission of a written declaration that further mediation would be futile. Such a declaration shall be conclusory and neutrally worded to avoid any negative inference respecting any party to the mediation.

(17) Confidentiality—

(A) The entire mediation process shall be kept confidential, except for the terms of any final agreements reached during the mediation. The parties, the mediator and any experts used by the mediator, unless all parties agree otherwise, shall not disclose information obtained during the mediation process to anyone that did not participate in the mediation, including, but not limited to, Commissioners, Commission Staff and third parties; provided, however, that the Commissioners may be informed in writing, with a copy provided to each party to the mediation, of the identity of the participants and, in the most general manner, the progress of the mediation. Section 386.480, RSMo 2000 is applicable to mediations.

(B) Except as the parties otherwise agree, the mediator, and any experts used by the mediator, shall keep confidential all information contained in any written materials, the materials themselves and any other information submitted to the mediator. All records, reports, or other documents received by the mediator while serving in that capacity shall remain confidential. The mediating parties and their representatives are not entitled to receive or review any such materials or information submitted to the mediator by another party or representative, without the concurrence of the submitting party. At the conclusion of the mediation, the mediator shall return to the submitting party all written materials and other documents which that party provided the mediator.

(C) The mediator shall not divulge records, documents and other information submitted to him or her during the mediation proceeding, nor shall the mediator testify in regard to the mediation, in any subsequent adversarial proceeding or judicial forum. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitration, judicial or other proceeding, any of the following:

1. Views expressed or suggestions made by another party with respect to a possible resolution of the dispute,
2. Statements made by another party in the course of the mediation,
3. Proposals made or views expressed by the mediator, or
4. The fact that another party had or had not indicated willingness to accept a resolution proposed by the mediator.

(18) Post-Agreement Procedure—The parties shall present to the Commission for approval any final agreements reached during mediation. Such proposed agreements, on

the face of the agreement, shall:

(A) not discriminate against a telecommunications carrier not a party to the mediated agreement;

(B) be consistent with the public interest, convenience and necessity; and

(C) comply with the Commission's service quality standards for telecommunications services as well as the requirements of all other rules, regulations, and orders of the Commission.

AUTHORITY: section 386.410, RSMo 2000.

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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: 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 on or before March 5, 2004, and should include a reference to commission Case No.TX-2003-0487. 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.state.mo.us/efis.asp>>. A public hearing regarding this proposed rule is scheduled for March 12, 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 TDD Hotline 1-800-829-7541.