

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 240-33.020  
Diskette File Name Final Rule 33.020  
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 33.020

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 240-33.020, Sections seven (7) and thirty-one (31) have been modified.**

**In Section seven (7), the commission deleted the word “unidentifiable” and replaced the word “an” with “a”, and also added the words “or 101-XXXX” at the end of the sentence.**

**In Section thirty-one (31), the commission deleted the words “user that is an identifiable” from the 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 Rule 4 CSR 240-33.020  
Definitions.

**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 6<sup>th</sup> day of July 2004.

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 handwritten signature in black ink, appearing to read "Dale Hardy Roberts", is written over the text "BY THE COMMISSION".

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 240-33.020 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 374-75). 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. Five (5) written comments specifically addressed the proposed amendment. At the public hearing, Natelle Dietrich of the commission's staff 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; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, filed or concurred in comments recommending the deletion of the requirement that customers be "unidentifiable" from the proposed language of sections (7) and (31) of the rule. MCI recommended the deletion because some customers covered by the definitions may be identifiable, but should still be included within the definitions.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission has considered the comments and agrees that the suggested change to the proposed rule is appropriate, because customers using dial-around patterns may be identifiable, but still fall within the defined group of "casual calling customers" or "transient customers."

**COMMENT:** Mimi MacDonald, counsel for SBC Missouri, filed a written comment and testified at the public hearing that the proper way to identify the calling pattern referenced in proposed section (7) should be "101-XXXX" rather than "10-10-XXX." At the public hearing,

Natelle Dietrich of the commission's staff indicated that the staff was not familiar with the 101-XXXX calling pattern, and recommended the rule not be changed unless further information was provided. SBC then testified that the four (4) Xs represent the carrier identification code.

RESPONSE AND EXPLANATION OF CHANGE: The commission will modify this section to include a reference to both dialing patterns, as the references are used simply as an example, without limitation. "10-10-XXX" is actually a subset of the dialing pattern "101-XXXX." The latter pattern may be more technically accurate, but the former pattern is the more widely known and understood reference.

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 240-33.020 Definitions**

(7) Casual calling customer is a customer that accesses the telephone network by a dial around pattern such as 10-10-XXX or 101-XXXX.

(31) Transient customer is a customer that accesses telecommunications services through the use of a traffic aggregator such as payphones or hotels.

## MEMORANDUM

**TO:** Dale Hardy Roberts, Secretary

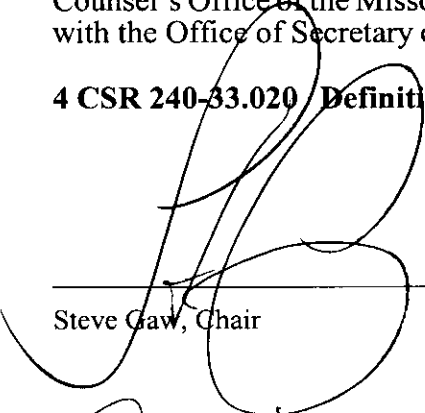
**DATE:** July 6, 2004

**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 240-33.020 Definitions.**



\_\_\_\_\_  
Steve Gaw, Chair



\_\_\_\_\_  
Connie Murray, Commissioner



\_\_\_\_\_  
Robert Clayton III, Commissioner



\_\_\_\_\_  
Jeff Davis, Commissioner



\_\_\_\_\_  
Linward "Lin" Appling, Commissioner