

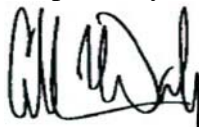
**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Proposed Amendment)
To 4 CSR 240-3.545, Filing Requirements) **File No. TX-2010-0159**
For Telecommunications Company Tariffs)

STAFF COMMENTS

COMES NOW the Staff of the Missouri Public Service Commission and respectfully submits the attached Comments in this rulemaking matter.

Respectfully submitted,



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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 11th day of February, 2010.



**BEFORE THE PUBLIC SERVICE COMMISSION
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In the Matter of a Proposed Amendment)
To 4 CSR 240-3.545, Filing Requirements) File No. TX-2010-0159
For Telecommunications Company Tariffs)

Comments of the Staff of the Missouri Public Service Commission

The Staff of the Missouri Public Service Commission (Staff) supports the proposed rulemaking. In Staff's opinion the proposed rulemaking is appropriate; however the proposed rulemaking could be further improved. These comments will attempt to explain why the rulemaking is necessary. In addition these comments will propose some minor additional revisions to try and further clarify the rulemaking.

Main Rationale for the Proposed Rulemaking of 4 CSR 240-3.545(16)

The basic rationale behind this proposed rulemaking is to simply ensure Commission rule 4 CSR 240-3.545(16) more appropriately complies with existing Missouri law. House Bill 1779 became effective on August 28, 2008 which significantly altered telecommunications regulations. Specific provisions within this legislation impact company requirements to notify the Commission of the introduction, revisions and the elimination of telecommunications packages. The legislation added the bolded text shown below to Section 392.200.12:

12. Packages of services may be offered on an equal basis by incumbent and alternative local exchange companies and shall not be subject to regulation under section 392.240 or 392.245, nor shall packages of services be subject to the provisions of subsections 1 through 5 of this section, provided that each telecommunications service included in a package is available apart from the package of services and still subject to regulation under section 392.240 or 392.245. For the purposes of this subsection, a "package of services" includes more than one telecommunications service or one or more telecommunications service combined with one or more nontelecommunications service. **Any tariff to introduce a new package or to make any change to an existing package, except for the elimination of a package, shall be filed, on an informational basis, with the commission at least one day prior to the introduction of such new package or implementation of such change. Any tariff to eliminate an existing package shall be filed, on an informational basis, with the commission at least ten days prior to the elimination of the package.**

Existing Commission rule 4 CSR 240-3.545(16)(C) clearly conflicts with this new statute because the Commission's current rule requires a 30-day tariff filing to eliminate any

package of services. In contrast this new legislation allows packages to be eliminated on ten days notice to the Commission. Current wording of 4 CSR 240-3.545(16) also doesn't clearly establish whether rate increases for packages can be made on one day notice to the Commission. In general the proposed revisions to Commission rule 4 CSR 240-3.545(16) attempt to more clearly explain minimum time frames for notifying the Commission of rate changes. Section 16 of this portion of the Commission's rules will be discussed by subsection in the remainder of these comments. In addition, the proposed deletions of Sections 18, 19 and 21 are discussed.

Section (16) Heading:

This rulemaking proposes to alter the heading for Commission rule 4 CSR 240-3.545(16). Revising this section's heading is appropriate because the current reference to tariff filings pursuant to Section 392.500 requires the reader to cross-reference Missouri statutes. This type of cross-referencing makes the Commission's rules more difficult to comprehend. The proposed heading "Requirements for Tariff Filings That Change Rates For Services" is more general and eliminates the need to have Missouri statutes on hand to interpret the rule. Staff supports the proposed change.

Section (16)(A):

This rulemaking proposes to significantly re-word existing subsection (A). This subsection is currently worded to require ten days notice of any rate increase for a competitive service. The proposed rulemaking attempts to clarify the applicability of the ten day notice requirement. In Staff's opinion, the proposed rulemaking's use of the word "individual rates or charges" may generate confusion. For example use of the term "individual" could be interpreted as a reference to an individual customer's rates or alternatively a reference to rates for individual services rather than a package of services. This latter interpretation makes more sense given Missouri statutes' differing time frames for Commission notification for a package of service. Consequently confusion can be minimized by not using the term "individual" but instead insert clarifying language so this subsection reads:

(A) The commission shall be notified at least ten (10) days in advance of a proposed increase in rates or charges or a proposed change in any classification or tariff resulting in an increase in rates or charges for a competitive telecommunications service available on an *a la carte* basis. Commission notice shall be in the form of a tariff filing with a proposed effective date that is at least ten (1) days after the tariff has been filed.

The last sentence explaining Commission notice shall be in the form of a tariff filing deserves some mention. This sentence is already contained in the Commission's existing rule. Therefore this rulemaking is just maintaining the current practice of using a tariff filing as the means for Commission notice.

The rulemaking proposes to add the sentence within subsection, “Potentially affected customers shall be notified at least ten (10) days prior to the rate increase.” In Staff’s opinion this proposed sentence is unnecessary and therefore Staff recommends the Commission not adopt this sentence. This sentence is unnecessary because it does not directly pertain to tariff filing requirements as suggested by this section’s heading. In addition, customer notice requirements are already contained in existing Missouri Commission rules 4 CSR 240-3.545(15) and 4 CSR 240-33.040(4). See Attachment A for Staff’s suggested changes to subsection (16)(A).

Section (16)(B):

This rulemaking proposes to significantly re-word subsection (B). The rewording of this subsection attempts to more clearly state that Commission notice shall be in the form of a tariff filing with a proposed effective date that is at least one day after the tariff has been filed. Subsequent paragraphs within this subsection have been deleted in order to simplify the rule. This rulemaking also proposes to insert the word “individual” within this subsection; however for the same reasons cited for subsection (A), Staff recommends this word not be adopted.¹ See Attachment A for Staff’s recommended changes to subsection (16)(B).

Section 16(C):

This rulemaking proposes to replace all the requirements contained within this subsection. This subsection currently states that a 30-day tariff filing is required to introduce or revise terms for any competitive service available on an individual basis or to eliminate a package of services. Maintaining a requirement within section (16) regarding terms and conditions doesn’t make sense if the Commission changes the heading for this section so that it attempts to only identify requirements for tariff filings changing rates for services. This rulemaking proposes to replace the Commission notice requirements for packages contained in subsection (C) with requirements that specifically match package requirements of House Bill 1779. Such a revision is needed to ensure compliance with this legislation. Staff supports the proposed changes in this subsection.

Section 16(D):

This rulemaking proposes to create a new subsection (D); however the tariff filing requirements for promotions are currently within the Commission’s rules. These requirements are simply being moved from section (19) to the proposed subsection (D). The definition for a promotion contemplates a reduction or waiver of a tariffed rate for a limited period of time. Moving the requirements of section (19) to subsection (D) is consistent with the requirements for section (16). Staff supports the proposed change to this subsection.

¹ In contrast to subsection (A) Staff’s recommended additional clarifying language using the term “*a la carte*” is unnecessary within subsection (B). Such additional clarifying language is unnecessary because any rate decrease regardless of whether the rate pertains to a rate for an *a la carte* individual service or package of services can be performed on one day notice.

Section 16(E):

This rulemaking proposes to create a new subsection (E). This proposed subsection states that changes of rates within a previously approved band of rates do not require tariff changes or prior commission notice. This subsection is based on Section 392.510.1 which states:

Telecommunications companies may file proposed tariffs for any competitive or transitionally competitive telecommunications service, which includes and specifically describes a range, or band, setting forth a maximum and minimum rate within which range a change in rates or charges for such telecommunications service could be made without prior notice or prior commission approval.

The concept of allowing a company to change rates within a previously approved band of rates without requiring a tariff change or prior commission notice has been a provision within the statutes for a number of years. This statutory provision was not impacted by House Bill 1779. Although this provision suggests a company's tariff may not identify the currently effective rates for a rate banded service, this provision is allowed under Missouri law. In this regard the Commission's requirements for tariff filings that change rates for service should acknowledge this provision. Staff supports the proposed change to this subsection.

Section (18) and Section (21):

This rulemaking proposes to eliminate these two existing sections. In Staff's opinion, both sections can be deleted. Most tariff filings should simply be made via the Commission's Electronic Filing and Information System.

Section (19):

This rulemaking proposes to move this section into the previously discussed 4 CSR 240-3.545(16)(D). Staff supports this proposed change.

Section (20) and Section (22):

These two sections are simply being renumbered. If the Commission eliminates existing Sections (18) and (21), moves Section (19) to Section (16)(D) then Section 20 should be renumbered as Section (18). Likewise existing Section (22) should be renumbered as Section (19).

Summary

Staff supports the proposed rulemaking; however Staff has suggested some subsequent minor revisions in Section (16)(A) and Section (16)(B) of this proposed

rulemaking. These revisions were previously discussed in these comments; however Attachment A shows how these subsequent revisions will affect the proposed rulemaking.

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

PROPOSED AMENDMENT

4 CSR 240-3.545 Filing Requirements for Telecommunications Company Tariffs

PURPOSE: These amendments to sections (16) through (23) clarify certain effective dates and other administrative procedures for proposed tariff revisions, consistent with recent changes in the law.

(16) Requirements For Tariff Filings **That Change Rates For Services.**
~~[Pursuant to Section 392.500, RSMo.]~~

(A) The commission shall be notified at least ten (10) days in advance of a proposed increase in **individual** rates or charges or a proposed change in any classification or tariff resulting in an increase in rates or charges for a competitive telecommunications service available on an a la carte basis. **Commission notice shall be in the form of a tariff filing with a proposed effective date that is at least ten (10) days after the tariff has been filed. Potentially affected customers shall be notified at least ten (10) days prior to the rate increase.**

~~[1. A proposed increase in rates or charges or a proposed change in any classification or tariff resulting in an increase in rates or charges pursuant to section 392.500 is defined as a rate increase to existing rates or charges for any competitive service.~~

~~2. No other tariff changes, except as directed by commission order or as allowed under section (19) below, are permitted on ten (10) day's notice.~~

~~3. Commission notice shall be in the form of a tariff filing with a proposed effective date that is ten (10) days after the tariff has been filed.]~~

(B) The commission shall be notified at least one (1) day in advance of a proposed decrease in **individual** rates or charges or a proposed change in any classification or tariff resulting in a decrease in rates or charges for competitive telecommunications services. **Commission notice shall be in the form of a tariff filing with a proposed effective date that is at least one (1) day after the tariff has been filed.**

~~[1. A proposed decrease in rates or charges or a proposed change in any classification or tariff resulting in a decrease in rates or charges pursuant to section 392.500 is defined as:~~

~~A. A rate decrease to existing rates or charges for any competitive service;~~

~~B. A proposal to establish or revise a package of services involving a regulated intrastate service provided all regulated~~

~~intrastate telecommunications services in the package are currently tariffed on an individual basis.~~

~~2. No other tariff changes, except as directed by commission order, are permitted on one (1) day's notice.~~

~~3. Commission notice shall be in the form of a tariff filing with a proposed effective date that is one (1) day after the tariff has been filed.]~~

(C) The commission shall be notified at least one (1) day in advance of either the introduction of a new package of services (as that term is used in section 392.200.12 RSMo Supp. 2008) or a change is made to an existing package of services. The commission shall be notified at least ten (10) days in advance of the elimination of a package of services. Commission notice shall be in the form of a tariff filing with a proposed effective date consistent with required commission notice.

~~[(C) A thirty (30) day tariff filing is required to introduce or revise the terms and conditions of any competitive service available on an individual basis. A thirty (30) day tariff filing is required to eliminate any package of services.]~~

(D) Promotions are those service offerings that provide a reduction or waiver of a tariffed rate for a limited period of time. New promotions or changes to existing promotions are allowed to go into effect after one (1) day prior notice to the commission. Promotions must be offered under tariff, and prior notification to the commission via a tariff filing is required. Promotions must have established start and end dates and must be offered in a nondiscriminatory manner.

(E) Changes of rates within a previously approved band of rates do not require tariff changes or prior commission notice.

(17) When a telecommunications company files a revised tariff or sheet(s) pursuant to a commission order the cover letter shall state that the filing is in compliance with the commission's order in Case No. ____ and shall indicate the location of the changes in the PSC Mo. No. ____.

~~[(18) Except as otherwise provided in this rule, no tariff will be accepted for filing unless it is delivered to the commission free from all charges or claims for postage and allows the full thirty (30) days required by law from date of receipt until effective date requested in the cover letter.]~~

~~[(19) Promotions are those service offerings that provide a reduction or waiver of a tariffed rate for a limited period of time. Promotions are allowed to go into effect after seven (7) days prior notice to the commission for competitive services and after ten (10) days prior notice to the commission for noncompetitive services.~~

~~Promotions must be offered under tariff, and prior notification to the commission via a tariff filing is required. Promotions must have established start and end dates and must be offered in a nondiscriminatory manner.]~~

(18) ~~[(20)]~~ In the case of a change of name, the telecommunications company shall issue immediately and file with the commission an adoption notice substantially as follows: “The (name of telecommunications company) hereby adopts, ratifies and makes its own, in every respect as if the same had been originally filed by it, all tariffs filed with the Public Service Commission, State of Missouri, by the (name of telecommunications company) prior to (date) or the telecommunications company shall file a new tariff under the new name.” Specific requirements for filings regarding company name changes are contained in Chapter 2 of the commission’s rules in rule 4 CSR 240-2.060. In addition to filing the items in 4 CSR 240-2.060, applicant must notify its customers at or before the next billing cycle of any name change affecting customer recognition of the company and file a copy of that notice with the adoption notice.

~~[(21) Tariffs sent for filing should be addressed to Secretary, Public Service Commission, 200 Madison Street, PO Box 360, Jefferson City, MO 65102.]~~

(19) ~~[(22)]~~ ~~[Within six (6) months of the effective date of the rule, all]~~ **All** telecommunications companies shall update the commission’s electronic filing system with the current name, address, telephone number and email address for the regulatory contact person within the telecommunications company ~~[—This information shall be updated in the electronic filing system]~~ within ten (10) business days of when changes occur.

(20) ~~[(23)]~~ Waivers regarding compliance with the requirements of this rule granted under previously used rule numbers such as 4 CSR 240-30.010(2)(C) will continue in effect unless otherwise ordered by the commission.

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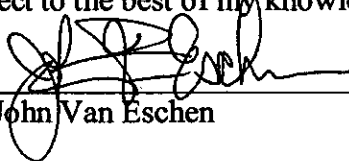
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Case No. TX-2010-0159

AFFIDAVIT OF John Van Eschen

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

John Van Eschen, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in preparing these comments. Any facts therein are true and correct to the best of my knowledge and belief.



John Van Eschen

Subscribed and affirmed before me this

11th

day of February 2010



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086



NOTARY PUBLIC