

MEMORANDUM

TO: Steven C. Reed, Secretary

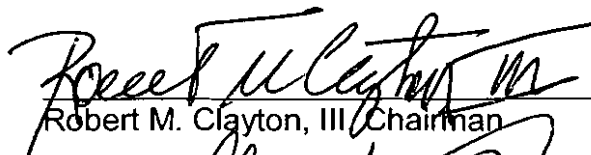
DATE: April ¹⁴~~7~~, 2010

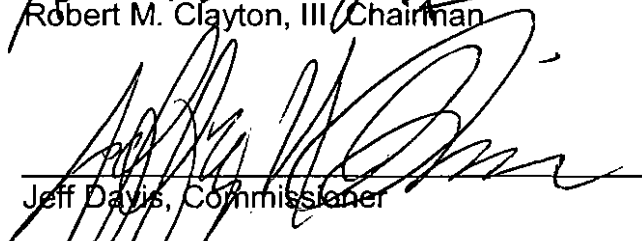
RE: Authorization to file Final Order of Rulemaking with the Office of Secretary of State

CASE NO.: TX-2010- 0159

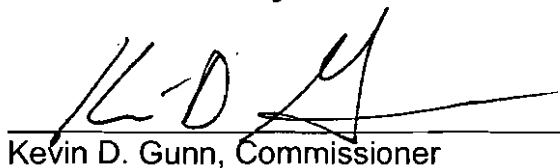
The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Final Order of Rulemaking with the Office of the Secretary of State, to wit:

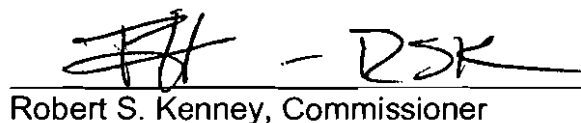
Proposed Rule 4 CSR 240-3.545 – Filing Requirements For Telecommunications Company Tariffs


Robert M. Clayton, III, Chairman


Jeff Davis, Commissioner


Terry M. Jarrett, Commissioner


Kevin D. Gunn, Commissioner


Robert S. Kenney, Commissioner

Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-3.545

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Morris L. Woodruff Phone 573-636-8957 FAX 573-526-6010

Email address morris.woodruff@psc.mo.gov

Morris L.

Data Entry Woodruff Phone 573-636-8957 FAX 573-526-6010

Email address morris.woodruff@psc.mo.gov

Interagency mailing address PSC, Ste. 900, Gov. Ofc. Bldg. Jefferson City, MO 65102

TYPE-OF-RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☐ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☒ Order of Rulemaking

Effective Date for the Order

☒ Statutory 30 days OR Specific date

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☒ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

4 CSR 240-3.545(16)(A) and (B), and sections (18), (19), (20) and (21) have been amended

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

APR 14 2010

ADMINISTRATIVE RULES



Commissioners

ROBERT M. CLAYTON III
Chairman

JEFF DAVIS

TERRY M. JARRETT

KEVIN GUNN

ROBERT S. KENNEY

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>

WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration and
Regulatory Policy

ROBERT SCHALLENBERG
Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

STEVEN C. REED
Secretary/General Counsel

KEVIN A. THOMPSON
Chief Staff Counsel

Honorable Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Dear Secretary Carnahan:

Re: Amendment of 4 CSR 240-3.545

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission for filing.

Statutory Authority: - Sections 386.250, RSMo 2000.

If there are any questions, please contact: **Morris L. Woodruff**, Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-2849
morris.woodruff@psc.mo.gov

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Chief Regulatory Law Judge
Missouri Public Service Commission

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 3—Filing Requirements for Telecommunications Company Tariffs**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.250, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-3.545 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2010 (35 MoReg 209). The sections with changes are reprinted here. The proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended March 5, 2010, and a public hearing on the proposed rule was held March 8, 2010. Timely written comments were received from the staff of the Missouri Public Service Commission and from AT&T Missouri. In addition, the commission's staff and AT&T Missouri offered comments at the hearing. The comments generally supported the proposed amendment, but AT&T and Staff proposed certain modifications to the amendment.

COMMENT 1 Changes to Section 16 in general: The commission's staff offered a written comment that explains that under the commission's existing rule, a telecommunications company that wants to file a tariff to introduce or revise any competitive service must file a tariff with the commission at least thirty days before that tariff becomes effective. In 2008, the Missouri General Assembly amended section 392.200.12, RSMo, to allow such tariffs to be filed with one day's notice for tariffs that reduce rates and ten day's notice for tariffs that would increase rates. Staff explains that its general purpose in amending the regulation is to bring the regulation into compliance with the requirements of the statute. AT&T Missouri supports that general purpose.

RESPONSE: The commission will not change this aspect of the amendment.

COMMENT 2 Changes to the Heading of Section 16: The proposed amendment would remove a reference to tariff filings made pursuant to Section 392.500, RSMo, and replace it with a more general reference to tariff filings that change rates for services. AT&T Missouri supports changing the heading, but would change the heading to "Requirements for Tariff Filings that Change Rates,

Terms and Conditions for Services." The important distinction is that AT&T would add a reference to tariff filings that change terms and conditions for services. The commission discusses that distinction in detail at comment 5.

RESPONSE: As explained in comment 5, the commission will not add a section making the rule apply to tariff filings that change terms and conditions without increasing or decreasing rates. Therefore, the commission will not modify the revised heading found in the proposed amendment.

COMMENT 3 Changes to Subsection 16(A): Staff's comment proposes to modify two aspects of the proposed amendment to this subsection. The first sentence of the proposed amendment refers to proposed increases in "individual" rates. Staff explains that the term "individual rates" is intended to refer to rates for services that are not offered as part of a larger package. It is concerned that using the term "individual rates" could confuse readers into believing that the rule applies to rates offered to individual customers. For that reason, Staff proposes to change the amended language to refer to increases in rates offered on an "*a la carte* basis." AT&T Missouri does not oppose that change.

Staff also proposes to remove the last sentence of the proposed amendment to this subsection because that requirement is already contained in other commission rules and does not need to be repeated in this section. AT&T Missouri supports that modification.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with Staff's comment and will modify the amendment in the manner proposed by Staff.

COMMENT 4 Changes to Subsection 16(B): Staff again proposes to replace the "individual" language of the proposed amendment with the *a la carte* phrase used in section 16(A). AT&T Missouri supports that modification.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with Staff's comment and will modify the amendment in the manner proposed by Staff.

COMMENT 5 Changes to Existing Subsection 16(C): The proposed amendment would remove the entirety of existing section 16(C), which requires a telecommunications company to file a thirty-day tariff to introduce or revise the terms and conditions of any competitive service. AT&T Missouri points out that the removal of this section leaves a gap in the rule. Subsection 16(A) requires a telecommunications company to file a ten-day tariff if it wants to increase rates. Subsection 16(B) allows the company to file a one-day tariff to decrease rates. But the proposed rule does not indicate what kind of tariff should be filed if the company wants to change a term or condition in the tariff without either increasing or decreasing rates.

AT&T Missouri would fill that gap with a new subsection 16(C) that states:

The commission shall be notified at least ten (10) days in advance of a proposed introduction or revision of any classification or tariff resulting in neither an increase or decrease in rates or charges for competitive telecommunications services 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.

Staff acknowledges the existence of the gap described by AT&T Missouri, but indicates that its intent is to create a rule that mirrors the provisions of House Bill 1779, which contains the same gap.

To avoid the ambiguity that would result from the existence of the gap, Staff proposes to retain a modified version of section 18 of this rule, which would be eliminated in the proposed amendment. Staff's revised section 18 would state:

Except as otherwise provided in this rule, no tariff will be accepted for filing unless it allows the full thirty (30) days required by law from date of receipt until effective date.

Thus, Staff would retain the thirty-day tariff requirement for tariffs that change terms and conditions of service without either increasing or decreasing rates. Staff reasons that changes to terms and conditions can be quite complicated and its review of such changes can be time consuming. Therefore, absent a statutory mandate to allow a shorter time, Staff would retain the thirty-day tariff requirement.

AT&T Missouri concedes that the controlling statute does not require a less than thirty-day period, but argues that the clear intent of the legislature in recent years has been to reduce the delays resulting from regulation of competitive services. In that light, a ten-day tariff requirement for tariffs that change terms and conditions of service would be in line with the intent of the legislature. In addition, a ten-day tariff requirement for such tariff changes would reduce the risk that Staff and a telecommunications company will disagree about whether a particular tariff will have an effect on rates, and thus can go into effect on one or ten-days notice, or whether that tariff is merely changing terms and conditions, and thus requires thirty day's notice.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with its staff. The Commission is not willing to relinquish the time necessary to fully review tariff changes without a clear legislative mandate to do so. The Commission will not include the new subsection 16(C) proposed by AT&T Missouri, but will include the modified section 18 proposed by staff. The rest of the amended rule will be renumbered accordingly.

COMMENT 6 Changes to Subsection 16(C) of the Proposed Amendment.

The proposed amendment would create a new subsection 16(C) that deals with tariffs that offer packages of services. AT&T supports the new language of the subsection, but would renumber the section as 16(D) since it would create a different subsection 16(C).

RESPONSE: The commission will not modify this section of the proposed amendment.

COMMENT 7 Changes to Subsection 16(D) of the Proposed Amendment.

The proposed amendment would create a new subsection 16(D) to govern promotional offerings. The new subsection 16(D) would incorporate and replace section 19 in the existing rule. The new subsection would allow promotional tariffs to become effective on one day's notice, instead of the seven or ten day's notice required by the existing rule.

AT&T Missouri generally supports the new subsection, but opposes inclusion of a portion of the last sentence, which states: "[promotions] must be offered in a nondiscriminatory manner." AT&T Missouri explains that the controlling statute, section 392.200.11, RSMo, specifically indicates that the "undue or unreasonable" discrimination prohibitions found in section 392.200.3, RSMo, do not apply to promotional offerings. Furthermore, AT&T Missouri contends promotional offerings are by their nature discriminatory in that the company is offering a special rate to attract a special group of customers. Since the statute specifically allows telecommunications companies to offer discounted rates or special promotions, the nondiscriminatory language cannot apply. Finally, AT&T Missouri argues that the Commission should not attempt to evaluate whether the promotions statute is subject to an anti-discrimination analysis in this rulemaking.

Staff responds by pointing out that the non-discrimination phrase has been in the regulation for years and contends AT&T Missouri has not demonstrated a good reason to remove it. Staff concedes that a telecommunications company does not have to offer discounts and promotions to all its customers and can pick and choose which customer are eligible to receive such discounts and promotions.

RESPONSE: It is not clear to what extent a telecommunications company must comply with the undue or unreasonable discrimination provisions of section 392.200.3, RSMo, when offering a promotional tariff to some of its customers. But AT&T has not shown a good reason not to include the anti-discrimination language in the regulation. The commission will not make the change proposed by AT&T.

COMMENT 8 All Other Provisions of the Amendment: Staff offered comments explaining the other changes contained in the proposed amendment. AT&T Missouri did not oppose any of those changes.

RESPONSE: The commission will not modify the remaining sections of the proposed amendment except to renumber those sections as necessitated by other changes.

4 CSR 240-3.545 Filing Requirements for Telecommunications Company Tariffs

(16) Requirements For Tariff Filings That Change Rates For Services.

(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 competitive telecommunications services 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.

(B) The commission shall be notified at least one (1) day in advance of a proposed decrease in rates or charges or a proposed change in any classification or tariff resulting in a decrease in rates or charges for competitive telecommunications services 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 one (1) day after the tariff has been filed.

(18) Except as otherwise provided in this rule, no tariff will be accepted for filing unless it allows the full thirty (30) days required by law from date of receipt until effective date.

(19) 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.

(20) 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 within ten (10) business days of when changes occur.

(21) 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.