



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:

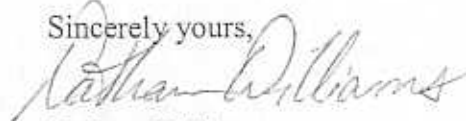
Executive Order 03-15 requires state agencies to "determine whether the proposed rules affect small businesses and, if so, the availability and practicability of less restrictive alternatives that could be implemented to achieve the same results of the proposed rule." A small business is defined to be "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 cursive script, appearing to read "Nathan Williams", written in dark ink.

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 240-36.050
Diskette File Name Proposed Rule 4 CSR 240-36.050
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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KELVIN L. SIMMONS

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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 240-36.050 Commission Approval of Agreements Reached by Arbitration

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 240-36.050 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 240-36.050 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.

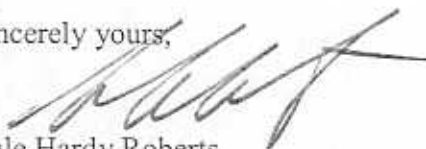
If there are any questions regarding the content of the rule, please contact:

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)

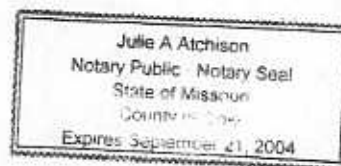
I, Joseph L. Driskill, Director of the Department of Economic Development, first being duly sworn on my oath state that it is my opinion that the cost of proposed rule 4 CSR 240-36.050—**Commission Approval of Agreements Reached by Arbitration** is less than five hundred dollars in the aggregate to this 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 21st, 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 240-36.050 Commission Approval of Agreements Reached by Arbitration

PURPOSE: This rule provides the procedure for commission approval of agreements reached by arbitration.

(1) Filing of Conformed Agreement—Within seven (7) days of the filing of a commission order approving, rejecting or modifying the arbitrator's final report, the parties shall file with the commission the entire agreement that was the subject of the negotiation. The agreement shall conform in all respects to the commission's order. Concurrently with the filing of the conformed agreement, the parties shall each file statements that indicate whether the agreement complies with the requirements of sections 251 and 252 of the Act, Missouri statutes, and the commission's rules.

Within ten (10) days of the filing of the agreement, anyone may file comments concerning the agreement; however, such comments shall be limited to the standards for review provided in section 36.050(3) of this chapter. The commission, upon its own motion, may hold additional informal hearings and may hear oral argument from the parties to the arbitration.

(2) Commission Review of Arbitrated Agreement—Within thirty (30) days following the filing of the arbitrated agreement, the commission shall issue a decision approving or rejecting the arbitrated agreement (including those parts arrived at through negotiations) pursuant to subsection 252(e) of the Act and all its subparts.

(3) Standards for Review—Pursuant to subsection 252(e)(2)(B) of the Act, the commission may reject arbitrated agreements or portions thereof that do not meet the requirements of section 251 of the Act, the FCC's regulations prescribed under section 251 of the Act, or the pricing standards set forth in subsection 252(d) of the Act. Pursuant to subsection 252(e)(3) of the Act, the commission may also reject agreements or portions thereof that violate other requirements of the commission, including, but not limited to, quality of service standards.

(4) Written Findings—The commission's decision approving or rejecting an arbitration agreement shall contain written findings. In the event of rejection, the commission shall address the deficiencies of the arbitrated agreement in writing and may state what modifications of such agreement would make the agreement acceptable.

(5) Application for Rehearing—A party, as defined in section 36.040(15) of this chapter, that wishes to seek review of a commission decision that approves an arbitrated

agreement may do so pursuant to section 252(e)(6) of the Act.

(6) Copies of Agreements Reached by Arbitration—Paper copies of arbitrated agreements that have been approved by the commission may be obtained from the commission by request. The commission may charge a reasonable amount for photocopying an agreement, as permitted by applicable law.

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.