

Following are suggested changes based on the rule workshop held January 24, 2005.
Not all participants present at the workshop agree with all suggested changes.

**Title 4 – DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 240 –Public Service Commission
Chapter 33—Service and Billing Practices
for Telecommunications Companies**

PROPOSED RULE

**4 CSR 240-33.045 – The Establishment of Monthly Charges and Taxes on
Residential and Business Customer Bills**

PURPOSE: *This rule identifies limitations and requirements for establishing and applying monthly charges and taxes for telecommunications services on residential and business customer bills.*

(A)

The definitions were originally included in the proposed rule for clarity purposes; however some workshop participants propose deleting these definitions because the definitions primarily pertain to interstate charges. These participants believe that including definitions for interstate services creates the impression the Missouri Commission is exerting jurisdiction over such charges.

DRAFT

Deleted: ~~<#>~~ Definitions. For the purposes of 4 CSR 240-33.045, the following definitions shall apply:¶
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~~<#>~~Excise tax means a tax on amounts paid for communications services pursuant to 26 U.S.C. § 4251.¶
¶
~~<#>~~Federal subscriber line refers to the interstate charge for the portion of the customer's line running from the customer's premise to the company's central office. The Federal Communications Commission has established guidelines for companies in the establishment of a monthly charge to recover the non-traffic sensitive costs associated with the federal subscriber line. The charge is only applied on an interstate basis. ¶
¶
~~<#>~~Franchise tax refers to a tax charged by a city in exchange for granting a utility a franchise to use public property in a manner not available to the general public.¶
¶
~~<#>~~Local gross receipts tax means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax as an income tax.¶
¶

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Deleted: ~~<#>~~Local number portability refers to the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one telecommunications carrier to another. The Federal Communications Commission authorizes a telecommunications company to recover its costs associated with implementing local number portability by applying a fixed, monthly charge for up to five years. Only one line item is allowed to designate recovery of a company's total local number portability cost. ¶
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~~<#>~~Relay fund refers to a governmentally mandated fund designed to provide funding for telecommunications companies to provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire¶ ... [1]

Exhibit 1

- (2) Except as otherwise provided in these rules, a company may establish and apply a monthly charge to a customer's bill only if that charge is for a new or additional service, **or tariffed charges, or charges for services not regulated by the Commission.**

Concerns were expressed that the language in black suggests the rule only allows companies to charge customers for new or additional services, and not for things that may not be considered "services" such as late charges. The language was expanded to include currently tariffed charges and charges not regulated by the Commission.

- (3) **Separate line item charges or taxes shall apply as follows:**

Deleted: A company shall apply only one monthly charge or tax on a per line basis to recover specific governmental mandates or assessments.

Participants raised the following concerns with the original language: (1) Some companies' bills reflect more than one charge for the same surcharge because local and long distance could appear on the same bill or the same surcharge could apply to the fixed monthly rate and also to the usage sensitive rates; (2) The rule as originally proposed may also prohibit companies sharing the same bill to separately apply the same charges and taxes. (3) The originally proposed language could be interpreted to mean companies HAD to apply all taxes or surcharges to a bill, even if they chose not to pass certain charges to the customer.

- (A) **A company may apply separate monthly charges or taxes to a customer's bill to recover costs associated with local number portability, universal service fund, relay fund, 911 service, the federal subscriber line or any separate monthly charge or tax mandated or authorized by federal, state or local government order, decision, ruling or mandate.**

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Participants expressed concerns that this language implied the Commission was asserting authority over interstate/federal charges. There was also a concern that the list could be interpreted as static, even if read with other portions of the rule that allow certain charges. Staff explained the section was added to address previous industry concerns that it wasn't clear what would be allowed as a separate line item, and the list was not meant to be all inclusive. The additional language addressed some of the concerns.

Relay Missouri language was moved to (3)(C) below.

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(B) A company may apply a separate monthly charge or tax to a customer's bill to collect or recover federal excise taxes, state and local sales taxes local gross receipts taxes, local franchise taxes, or any separate monthly charge or tax mandated or authorized by federal, state or local government order, decision, ruling or mandate.

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Similar language was added to the above section and other sections in the rule for consistency purposes. Several places were modified to indicate consistency with the words "mandated or authorized by..."

(C) All companies providing basic local exchange telecommunications service shall apply the charge for the Missouri relay fund on customer bills as directed by the Commission and shall identify the monthly charge for this purpose as the "Relay Missouri Surcharge".

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1.The Relay Missouri Surcharge is applied on a per line basis each month. The Commission determines the surcharge amount.

2.A company is allowed to retain a certain portion of revenue collected from the Relay Missouri Surcharge as determined by the Commission in order to recover billing and collection costs.

3.Remaining revenue collected from the Relay Missouri Surcharge shall be submitted to the Commission,

Deleted:

Some parties thought the Relay Missouri language was misplaced and too extensive for this rule. The parties expressed concerns that other charges were not explained in such details. Staff explained the language was added to codify existing processes. If this language is retained in the proposed rule, why does the proposed rule omit similar requirements for other charges mandated by the Missouri Commission such as the Missouri Universal Service Fund charge?

Additional concerns were raised that some companies currently identify the monthly surcharge as something different than the "Relay Missouri Surcharge". Establishing a requirement for all companies to consistently identify this charge as "Relay Missouri Surcharge" may require some companies to modify their billing systems. (Note: The proposed requirement stems from the Commission order issued in Case No. TO-90-174 issued on February 22, 1991 whereby the Commission appears to direct companies to identify the charge as the Relay Missouri Surcharge.)

(D) These monthly charges or taxes shall be identified on the customer's bill in easy to understand terms and in a manner consistent with their purpose or applicability.

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(4) ✓

Industry participants indicated this section was not necessary as they already have the ability to offer discounts.

Deleted: Nothing in this rule will prevent a telecommunications company from offering a discount to customers consistent with 392.200 RSMo. All discounts applied to intrastate telecommunications services shall be listed in the telecommunications company's intrastate tariff. A telecommunications company may offer a monthly charge with a discounted per minute rate.

- (5) Companies applying monthly charges or taxes that are not identified in subsection (2), (3)(A) or (3)(B) shall, upon request by the Commission Staff, produce evidence that such monthly charges or taxes **are authorized or mandated** by federal, state or local government order, decision, ruling or mandate.

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Industry participants indicated this section gives the impression the Commission has authority over interstate charges. Staff indicated the language allows it to request support that charges were authorized or mandated from some authority if there is a question as to the applicability of the charge and this rule. This explanation and the above changes addressed most concerns since Staff already can ask for support of rates or charges that appear in a proposed tariff or on a customer bill.

OPC indicated it would like the language to remain unchanged from the original proposal.

- (6) Upon adoption of this rule, any company that has established, or applies, or has in its intrastate tariff a monthly charge or taxes that appear inconsistent with this rule shall have 90 days from the effective date of the rule remove such monthly charges or, in the alternative, seek formal commission approval to continue to apply such monthly charges or taxes. Commission orders approving such a monthly charge or taxes prior to the effective date of this rule shall not be considered approval.

Industry participants are strongly opposed to Section 6 as originally proposed. The industry participants indicate they cannot support anything that flatly opposes certain currently tariffed charges. The industry participants indicate that if charges are currently tariffed, they are lawfully approved and have the same force and effect of law.

The following changes were suggested:

(6) ✓

OPC strongly objects to the removal of Section 6 as originally proposed.

(6) The Commission, based on a complaint filed pursuant to 4 CSR 240-2.070, may seek to remove or modify any charge it believes does not comport with this rule. Nothing in this rule will preclude the Commission from suspending or rejecting company tariffs when similar or identical tariffs have been approved for other carriers.

Deleted: Upon adoption of this rule, any company that has established, or applies, or has in its intrastate tariff a monthly charge or taxes that appear inconsistent with this rule shall have 90 days from the effective date of the rule remove such monthly charges or, in the alternative, seek formal commission approval to continue to apply such monthly charges or taxes. Commission orders approving such a monthly charge or taxes prior to the effective date of this rule shall not be considered approval.

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(7) All telecommunications companies shall provide a clear, full and meaningful disclosure of all monthly **charges and usage sensitive rates** at the time of the execution of a service agreement between the company and the customer or at the time the customer otherwise contracts with the company, but not later than prior to the date service is initiated. This disclosure shall be in addition to the itemized account of monthly charges during the customer's first billing period for the equipment and service for which the customer has contracted, as required by 4 CSR 240-33.040(8).

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Some participants indicated concerns with disclosing usage sensitive rates. The language was expanded to clarify this disclosure.

(8) These rules establish the minimum requirements for the imposition of monthly charges or taxes as mandated or authorized by federal, state or local government. If more restrictive requirements are established for interstate services, then such requirements will apply to intrastate services.

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Some participants raised concerns in this section and others with the word "expressly". Industry representatives suggested the second sentence be removed in its entirety since the language is vague. They expressed concerns that they would not know what interstate requirements would be considered more restrictive and should apply to intrastate services.

OPC indicated it was supportive of the language as proposed.

(9) Any telecommunications company that serves as the billing agent for another entity shall not be held liable for monthly charges or taxes that appear on the customer's bill on behalf of that entity. Any telecommunications company that serves as the billing agent for another entity shall work cooperatively with the Commission or Staff to resolve any issues related to billing fraud or abuse.

This language was identified as an issue addressed in the industry proposal that was not included in the current draft of the proposed rule. The second sentence, addressing fraud or abuse, was added by OPC.

Local number portability refers to the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one telecommunications carrier to another. The Federal Communications Commission authorizes a telecommunications company to recover its costs associated with implementing local number portability by applying a fixed, monthly charge for up to five years. Only one line item is allowed to designate recovery of a company's total local number portability cost.

Relay fund refers to a governmentally mandated fund designed to provide funding for telecommunications companies to provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. A company may apply separate charges to support the federal relay fund and the state relay fund.

Sales tax means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

Universal service fund refers to a governmentally mandated fund designed to provide financial support to companies providing basic local telecommunications service in high-cost areas, providing support for telemedicine and educational and library purposes and/or to provide financial assistance to companies in providing discounted rates to low-income and/or disabled customers. The Federal Communications Commission authorizes companies to apply a separate monthly charge on customer bills to recover the company's assessment for the federal universal service fund.