

MATT BLUNT

**Secretary of State
Administrative Rules Division
RULE TRANSMITTAL**

*Administrative Rules Stamp

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MAR 19 2004

**SECRETARY OF STATE
ADMINISTRATIVE RULES**

A "SEPARATE" rule transmittal sheet **MUST** be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-3.535
 Diskette File Name Proposed Amendment 3.535
 Name of person to call with questions about this rule:
 Content Bob Berlin Phone 573-526-7779 FAX 573-751-9285
 Data entry Lesli Belt Phone 573-751-7499 FAX Same as above
 Email address bob.berlin@psc.mo.gov
 Interagency mailing address Governor Office Building, 200 Madison St., 8th Floor, Jefferson City, MO
 Statutory Authority 386.250 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 checked="" type="checkbox"/> Affidavit | <input type="checkbox"/> Public cost |
| <input type="checkbox"/> Forms, number of pages <u> </u> | <input type="checkbox"/> Private cost |
| <input checked="" 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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NOTE: ALL changes MUST be specified here in order for those changes to be published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.

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?

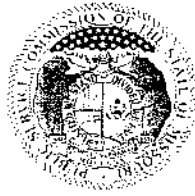
☐ YES

☐ 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.)



Commissioners

STEVE GAW
Chair

CONNIE MURRAY

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.state.mo.us>

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

March 19, 2004

Hon. Matt Blunt
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt,

Re: Proposed Amendment to Rule 4 CSR 240-3.535
Filing Requirements for Telecommunications Company Applications for Authority to
Acquire the Stock of a Public Utility.

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 19th day of March 2004.

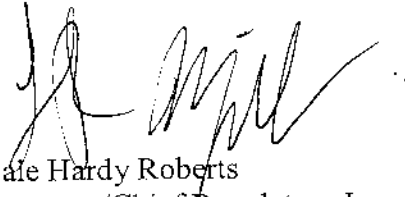
The Missouri Public Service Commission has determined and hereby certifies that this proposed amendment will have an economic impact on small businesses. The Missouri Public Service Commission also certifies that it has conducted an analysis of whether or not there has been a taking of real property pursuant to section 536.017 RSMo 2000 and that this proposed amendment does not constitute a taking of real property under relevant state and federal law.

Statutory Authority: Section 386.250 RSMo 2000.

If there are any questions, please contact:

Bob Berlin, Assistant General Counsel
P.O. Box 360
Jefferson City, MO 65102
(573) 526-7779,
FAX (573) 751-9285
bob.berlin@psc.mo.gov

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Dale Hardy Roberts", written over a faint circular stamp.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge



Commissioners

STEVE GAW
Chair

CONNIE MURRAY

ROBERT M. CLAYTON III

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Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

March 19, 2004

Missouri Small Business Regulatory Fairness Board
c/o Department of Economic Development
301 West High Street, Room 680
Jefferson City, MO 65102

Re: Proposed Amendment to Rule 4 CSR 240-3.535 Filing Requirements for
Telecommunications Company Applications for Authority to Acquire the Stock of a Public
Utility

Small Business Impact

No. TX-2003-0389

Dear Sir or Madam:

Executive Order 03-15, Section 2, requires, among other things, that state agencies determine whether a proposed rule or rules affect small businesses. If the Public Service Commission determines that its proposed rule or rules for amendment affect small businesses by causing a direct and significant economic burden, it must then prepare a small business impact statement for submission to the Secretary of State.

In consultation with the staff of the Public Service Commission, I have undertaken an analysis of whether the proposed amended rule removing current exemptions for competitive telecommunications companies regarding Commission filing requirements affect small businesses for applications for authority to acquire the stock of a public utility. I have determined, based on all available information, that the proposed amended rule listed above will have an affect upon small businesses in a direct and significant manner, or that it directly relates to the formation, operation or expansion of a small business.

The proposed amended rule listed above is designed to inform the Public Service Commission of a certificated competitive telecommunications company's plans for acquiring the stock of a public utility as required by Chapter 392. The following statements contain the determinations as required by the Executive Order:

1. Small businesses bearing costs will be competitive telecommunications companies. Competitive telecommunications company is defined at Section 389.020(9) as "a telecommunications company which has been classified as such by the commission pursuant to section 392.361, RSMo."

2. Competitive telecommunications companies seeking Commission authority to acquire the stock of a public utility will now have to provide certain items currently waived by Commission rule, as the amendment removes certain exemptions that were omitted inadvertently in the March 31, 2003 rule revisions. By removing the exemptions, these companies may incur additional processing costs such as the need for additional attorney review of the additional filing requirements associated with each transaction submitted pursuant to the proposed rule change.

3. The Commission's Staff estimates that a company subject to the amended rule may bear an indirect cost of \$1,300 for each company.

4. The Commission will receive the benefit of having additional information to review as a part of applications for authority to acquire stock of a public utility for any impact on Missouri consumers, and will no longer need to request supplemental submissions.


5. The Commission has modified its proposed amended rule by adding exemptions that were inadvertently omitted in the March 31, 2003 rule revisions and renumbers the remainder of the rule accordingly. The proposed amended rule also eliminates the exemption to subsection (2)(A) and (2)(C) for competitive telecommunications companies.

6. The Commission Staff sent proposed rule language to representative industry and attorney contacts to obtain fiscal impact feedback.

7. There are no comparable rules on the federal state or county level other than the Commission's related rules (and associated proposed amendments) at 4 CSR 240-3.520, 4 CSR 240-3.525, 4 CSR 240-3.530 and 4 CSR 240-3.535.

Please let me know if you have any questions based upon the foregoing.

Sincerely,

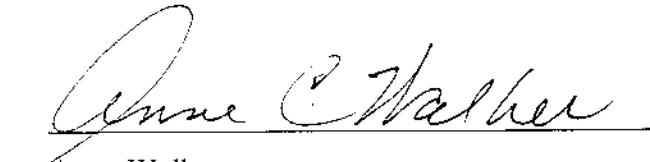


Robert S. Berlin
Assistant General Counsel
(573) 526-7779
(573) 751-9285

AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Anne Walker, Deputy Director of the Department of Economic Development, first being duly sworn on my oath state that it is my opinion that the cost of the **Proposed Amended Rule -- 4 CSR 240-3.535 -- Filing Requirements for Telecommunications Company Applications for Authority to Acquire the Stock of a Public Utility**, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.


Anne Walker
DEPUTY DIRECTOR
Department of Economic Development

Subscribed and sworn to before me this 11th day of February, 2004.
I am commissioned as a notary public within the County of
Cole, State of Missouri, and my commission expires on
April 29, 2006.


NOTARY PUBLIC

KIMBERLEY BRANDT SPRENGER
NOTARY PUBLIC STATE OF MISSOURI
CO. COLE
EXPIRATION DATE 04/29/2006

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: Missouri Department of Economic Development
Division: Missouri Public Service Commission
Chapter: Filing and Reporting Requirements
Type of Rulemaking: Revision
Rule Number and Name: 4 CSR 240-3.535 Filing Requirements for Telecommunications Company Applications for Authority to Acquire the Stock of a Public Utility

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification* by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
0	Class A Local Telephone Companies	\$0
0	Class B Local Telephone Companies	\$0
0	Class C Local Telephone Companies	\$0
1	Class Interexchange Companies	\$1300
	All entities	\$1300

* Class A Telephone Companies are incumbent local telephone companies with more than \$100,000,000 annual revenues system wide; Class B Telephone Companies are incumbent local telephone companies with \$100,000,000 annual revenues or less system wide; Class C Local Telephone Companies are all other companies certificated to provide basic local exchange telecommunications services, Class Interexchange Companies are long distance providers.

III. WORKSHEET

1. The proposed rule applies to all classes of telecommunications companies requesting authority from the Missouri Public Service Commission to Acquire the Stock of a Public Utility.
2. The estimated number of entities affected by the proposed rule is based on historic transactions whereby companies request such authority.
3. The aggregate impact of the cost to comply with the proposed rule change is based on an average \$1300 estimated increase in the costs to process the additional filing requirements associated with each transaction submitted pursuant to the proposed rule change.
4. The average estimated increase in costs was calculated based on information provided by industry representatives.

IV. ASSUMPTIONS

1. Fiscal year 2003 dollars were used to estimate costs. No adjustment for inflation is applied.
2. Estimates assume no sudden change in technology that would influence costs.
3. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission rules and regulations.

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MAR 19 2004

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

PROPOSED AMENDMENT

SECRETARY OF STATE
ADMINISTRATIVE RULES

4 CSR 240-3.535 Filing Requirements for Telecommunications Company Applications for Authority to Acquire the Stock of a Public Utility. The Public Service Commission is amending section (1) to remove current exemptions.

PURPOSE: This amendment removes current exemptions for competitive companies. This amendment also incorporates language in Section 1 that was inadvertently omitted in the March 2003 rule revisions and rennumbers the remainder of the rule accordingly.

(1) Competitive telecommunications companies are exempt from subsection 2(B) of this rule.

[1](2) In addition to the requirements of 4 CSR 240-2.060(1), applications for authority to acquire the stock of a public utility shall include:

(A) A statement of the offer to purchase stock of the public utility or a copy of any agreement entered with shareholders to purchase stock;

(B) A certified copy of the resolution of the directors of applicant authorizing the acquisition of the stock; and

(C) Reasons why the proposed acquisition of the stock of the public utility is not detrimental to the public interest.

[2](3) If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.

AUTHORITY: section 386.250, RSMo 2000. Original rule filed May 1, 2002.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment is estimated to cost private entities approximately thirteen hundred dollars (\$1300) annually for the life of the rule. It is anticipated that the total costs will recur annually for the life of the rule and may vary with inflation. A detailed fiscal note, which estimates the cost of compliance with this amendment, has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed amendment 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

within thirty (30) days after the publication of this notice in the Missouri Register, and should include a reference to Commission Case No. TX-2003-0389. 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.mo.gov/efis.asp>>. A public hearing regarding this proposed amendment is scheduled for June 4, 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 amendment, 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 Relay Missouri at 7-1-1.



Commissioners
STEVE GAW
Chair
CONNIE MURRAY
KELVIN L. SIMMONS
BRYAN FORBIS
ROBERT M. CLAYTON III

Missouri Public Service Commission

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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

November 26, 2003

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Re: Proposed Amendments to Rules 4 CSR 240-3.530 and 4 CSR 240-3.535
Case No. TX-2003-0389

Dear Mr. Roberts:

Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rule or regulation in light of the United States Supreme court decision in *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992). Pursuant to that order, I have undertaken a "takings analysis" of the above-referenced proposed rulemaking. In *Lucas*, the Court held that state regulation depriving a real property owner of all economically beneficial use of that real property constitutes a "taking" under the Fifth and Fourteenth Amendments of the U.S. Constitution, for which the property owner must be compensated. The Court also held that when state regulations compel a property owner to suffer a permanent physical invasion of his/her property, such an invasion is compensable.

The proposed amendments remove current exemptions for telecommunications company applications of the Commission's filing requirements for authority to issue stock, bonds, notes and other evidences of indebtedness and for authority to acquire the stock of a public utility.

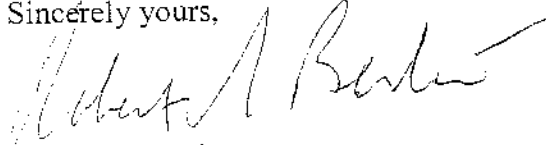
The proposed rule amendments do not implicate the takings clause of the U.S. Constitution, because they do not involve the taking of real property.

Please let me know if you have any questions on this issue.

November 26, 2003

Page 2

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Robert S. Berlin". The signature is written in dark ink and is positioned above the printed name.

Robert S. Berlin
Assistant General Counsel
(573) 526-7779
(573) 751-9285 (Fax)

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

DATE: March 18, 2004

RE: Authorization to File the Proposed Rule Amendments 4 CSR 240-3.530 and 3.535 and Proposed Rules 4 CSR 240-3.560 and 3.565 With the Office of Secretary of State

CASE NO: TX-2003-0389

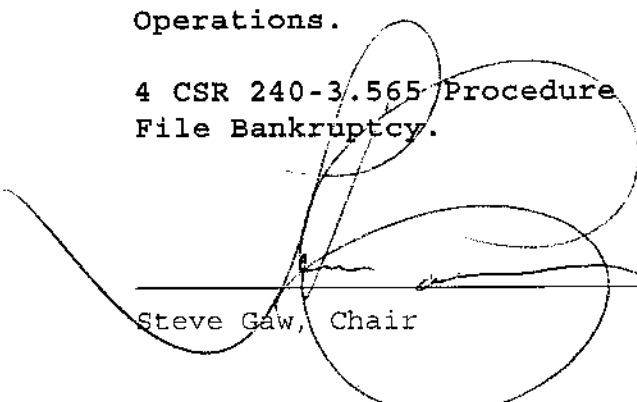
The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Proposed Rule Amendments and Proposed Rules with the Office of Secretary of State, to wit:

4 CSR 240-3.530 Filing Requirements for Telecommunications Company Applications for Authority to Issue Stock, Bonds, Notes and Other Evidences of Indebtedness.

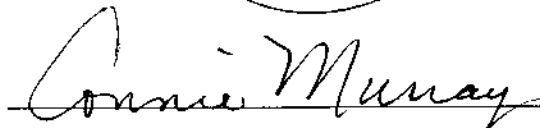
4 CSR 240-3.535 Filing Requirements for Telecommunications Company Applications for Authority to Acquire the Stock of a Public Utility.

4 CSR 240-3.560 Telecommunications Procedure for Ceasing Operations.

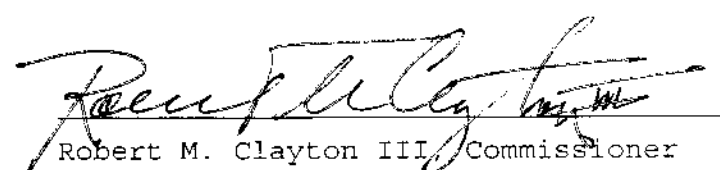
4 CSR 240-3.565 Procedure for Telecommunications Companies that File Bankruptcy.



Steve Gaw, Chair



Connie Murray, Commissioner



Robert M. Clayton III, Commissioner