

Jason Kander

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

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SEP 25 2015

SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-28.060

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

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TYPE OF RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency rulemaking, include effective date
☐ Proposed Rulemaking
☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration
☐ Request for Non-Substantive Change
☐ Statement of Actual Cost
☒ 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:

Section (6)(B) has been amended.

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON
AUG 26 2015
ADMINISTRATIVE RULES



Commissioners

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Chairman

STEPHEN M. STOLL

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Jason Kander
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-28.060 Service Requirements

Dear Secretary Kander,

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.

Statutory Authority: sections 386.040, 386.250, 386.310, and 392.461, RSMo 2000 and 392.450, RSMo Supp. 2013

If there are any questions regarding the content of this proposed rulemaking, please contact:

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Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 28 – Telecommunications IVoIP, Video Services

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ORDER OF RULEMAKING

SECRETARY OF STATE
ADMINISTRATIVE RULES

By the authority vested in the Public Service Commission under sections 386.040, 386.250, and 386.310 RSMo 2000, section 392.450 RSMo (Cum. Supp. 2013, and section 392.461, RSMo (Supp. 2014), the commission adopts a rule as follows:

4 CSR 240-28.060 Service Requirements is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 1, 2015 (40 MoReg 560). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended June 29, 2015, and the commission held a public hearing on the proposed rule on July 6, 2015. The commission received timely written comments from the Staff of the Commission (Staff); the Missouri Telecommunications Industry Association (MTIA); Southwestern Bell Telephone Company, d/b/a AT&T Missouri (AT&T); CenturyTel of Missouri, LLC d/b/a CenturyLink, Embarq Missouri, Inc., d/b/a CenturyLink, Spectra Communications Group, LLC d/b/a CenturyLink, and CenturyTel of Northwest Arkansas, d/b/a CenturyLink (CenturyLink); the Missouri Cable Telecommunications Association (MCTA); Verizon; and Level 3 Communications (Level 3). In addition, the following people offered comments at the hearing: Kenneth A. Schiffman, for Sprint Communications Company, LP (Sprint); Leo Bub for AT&T; William D. Steinmeier and Pamela Halleck for Level 3; Stephanie Bell for MCTA; Becky Owenson Kilpatrick for CenturyTel; Richard Telthorst for MTIA; Matthew Feil for Windstream; and Colleen M. Dale and John Van Eschen for Staff.

COMMENT #1: AT&T objects to the provision in 28.060(1) that would require telecommunications companies providing intrastate service to comply with the Commission's safety standards identified in 4 CSR 240-18.010. It argues the state safety standards are duplicative of federal standards and thus unnecessary. Further, AT&T argues that state safety standards are beyond the Commission's



authority to impose per Section 392.611, RSMo. Staff contends the safety standards are needed to ensure the telecommunications network functions properly, and thus are authorized by Section 392.611.3 RSMo.

RESPONSE: Among other things, section 392.611.3 RSMo (Non-Cum. Supp. 2014) preserves the commission's authority to regulate intercarrier issues, including network configuration issues. The commission agrees with staff that the minimum safety requirements described in 4 CSR 240-18.010 are necessary to ensure the proper functioning of the network. Further, those requirements are not burdensome on the companies. The commission will not make the change requested by AT&T.

COMMENT #2: AT&T and Verizon object to the provision in section 28.060(2) that would require telecommunications companies to ensure calls are being completed, and would forbid intentional actions to "frustrate, delay, impede, or prevent the completion of any intrastate call." They argue such a requirement is duplicative of federal standards and is therefore unnecessary and beyond the Commission's authority to impose. Staff contends the call completion requirement is necessary and complements the enforcement power of the FCC.

Verizon and MCTA also object that under Section 392.611, RSMo, the Commission has no authority to impose call completion requirements on IVoIP providers.

RESPONSE: Section 392.611, RSMo (Non-Cum. Supp. 2014), restricts the commission's authority to regulate telecommunications carriers. But subsection 392.611.3 preserves the Commission's authority to deal with intercarrier issues.

Call completion requirements are related to intercarrier compensation issues and thus are an appropriate area for continued commission involvement under that subsection. Subsection 392.611.2 RSMo (Non-Cum. Supp. 2014) restricts the commission's authority to regulate IVoIP providers, but it also indicates the limitations on the regulation of IVoIP providers do not extend, modify or restrict the provisions of subsection 3 of that statute. The commission has authority under subsection 3 of the statute to deal with intercarrier issues including call completion issues. That authority also applies to IVoIP providers. The Commission will not modify its rule as requested in the comment.

COMMENT #3: Section 28.060(5) imposes a state requirement to comply with federal anti-slamming regulations. AT&T asks the commission to make compliance with the anti-slamming regulation optional; applying only to those companies electing to be subject to those requirements. Staff replies that section 392.540, RSMo (2000) requires the commission to have an anti-slamming rule.

RESPONSE: Staff's reading of the section 392.540, RSMo (2000) is correct. The statute clearly requires the commission to promulgate such a rule, and requires that rule to be consistent with federal rules. The commission will not modify its rule as requested in the comment.

COMMENT #4: Subsection 28.060(6)(A) sets procedures for resolving customer disputes. AT&T asks the commission to extend the response time for companies to respond to Staff inquiries about denial or discontinuance of service issues from 30 to 45 days. Staff replies that 30 days for an initial response from the company is sufficient.

RESPONSE: The rule's allowance of 30 days to give an initial response to an inquiry from staff is sufficient. The rule does not require that such inquiries be fully resolved in 30 days. It merely requires a response. That is not a burdensome requirement. The commission will not modify the rule as requested in the comment.

COMMENT #5: In a separate comment about subsection 28.060(6)(A), MCTA asks the commission to add language to clarify that the obligations concerning customer disputes apply only to end-use customers and services of the phone company, not to customers and services of interconnected companies.

RESPONSE: The commission does not believe that the clarification proposed by MCTA is necessary and will not modify the rule as requested in the comment.

COMMENT #6: Subsection 28.060(6)(B) requires staff to advise a customer of their right to file a formal complaint under the commission's rules if their dispute with the company is not otherwise resolved. AT&T asks the commission to add language requiring staff to also inform customers of their right to "invoke binding arbitration if available under the service's terms and conditions." Staff replied that it does not support AT&T's proposal because it would be impractical to determine whether binding arbitration is available to a particular customer.

RESPONSE AND EXPLANATION OF CHANGE: AT&T's proposal to inform customers of binding arbitration rights does not require staff to determine whether a particular customer's contract with its carrier contains an arbitration provision. It would merely require that such customer be advised that such an

arbitration provision might exist. The commission agrees with AT&T's comment, and will modify the rule accordingly.

4 CSR 240-28.060 Service Requirements

(6) The following procedure will be used if the commission staff contacts a telecommunications company in order to help resolve a customer's dispute:

(B) If the matter remains unresolved after the company's final response the commission staff shall advise the customer of his/her right to file a formal complaint with the commission pursuant to commission rule 4 CSR 240-2.070(4), or to invoke binding arbitration if available under the service's terms and conditions.