

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

\*Administrative Rules Stamp

**RECEIVED**

MAR 23 2004

**SECRETARY OF STATE**  
**ADMINISTRATIVE RULES**

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

A. Rule Number 4 CSR 240-32.020  
Diskette File Name 240-32.020 Word 2000  
Name of Person to call with questions about this rule:  
Content Bruce H. Bates Phone 573-751-7434 FAX 573-751-9285  
Data Entry Susan L. Sundermeyer Phone 573-751-4335 FAX Same as above  
Email Address bruce.bates@psc.mo.gov  
Interagency Mailing Address Governor Office Building, 200 Madison St., 8th Floor, Jefferson City, MO  
Statutory Authority 386.040, 386.250, 386.310, 392.200 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 type="checkbox"/> Affidavit                             | <input type="checkbox"/> Public cost                                  |
| <input type="checkbox"/> Forms, number of pages <u>    </u>    | <input type="checkbox"/> Private cost                                 |
| <input 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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## RULE TRANSMITTAL (PAGE 2)

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E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-32.020

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.)

### **Summary of Changes to Rule 4 CSR 240-32.020(29):**

Staff recommends the change to the definition of “operator service calls” to reference only calls that are being dialed by using 0-(minus).

### **Summary of addition of Rule 4 CSR 240-32.020(30):**

The definition of “out of service” is being added to clarify its use as found in 4 CSR 240-32.080(5)(H)(2).

### **Summary of addition of Rule 4 CSR 240-32.020(49):**

The definition of “unusual repair” is being added to clarify its use as found in 4 CSR 240-32.080(5)(H)(2).

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

**CONNIE MURRAY**

**ROBERT M. CLAYTON III**

***Missouri Public Service Commission***

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**ROBERT J. QUINN, JR.**  
Executive Director

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**ROBERT SCHALLENBERG**  
Director, Utility Services

**DONNA M. PRENGER**  
Director, Administration

**DALE HARDY ROBERTS**  
Secretary/Chief Regulatory Law Judge

**DANA K. JOYCE**  
General Counsel

March 23, 2004

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

Re: 4 CSR 240-32.020      Definitions.

Dear Secretary Blunt:

I do hereby certify that the attached are accurate and complete copies of the Order of Rulemaking lawfully submitted by the Missouri Public Service Commission for filing this 23rd day of March 2004.

Statutory authority: 386.040, 386.250, 386.310, 392.200 RSMo (2000)

Missouri Public Service Commission Case No.: TX-2004-0106

If there are any questions, please contact: Bruce H. Bates, Associate General Counsel  
Missouri Public Service Commission  
200 Madison St.  
Post Office Box 360  
Jefferson City, Missouri 65102  
(573) 751-7434

Sincerely,

A handwritten signature in black ink, appearing to read "Dale Hardy Roberts".

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission

Enclosures

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT**  
**Division 240 – Public Service Commission**  
**Chapter 32 – Telecommunications Service**

**ORDER OF RULEMAKING**

By the authority vested in the Public Service Commission by sections 386.040, 386.250, and 392.200, RSMo, the commission amends a rule as follows:

4 CSR 240-32.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2003 (28 Mo Reg 2145-2146). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Written comments were filed regarding the following portions of 4 CSR 240-32.020: 4 CSR 240-32.020(5) the proposed definition for “basic local telecommunications service,” 4 CSR 240-32.020(29) the proposed definition for “operator assisted calls,” 4 CSR 240-32.020(36) the proposed definition for “service objective,” and 4 CSR 240-32.020(48) the proposed definition for “unusual repair.” In addition a comment recommended “out of service” be defined.

COMMENTS: AT&T Communications of the Southwest, Inc. (“AT&T”) expressed concerns regarding 4 CSR 240-32.020(5) pertaining to the proposed definition for basic local telecommunications service. AT&T states the proposed definition’s reference to the Missouri statutory definition is overly broad. AT&T recommends the definition reference 4 CSR 240-32.100 rather than Section 386.020(4) RSMo. MCI concurs with AT&T’s concerns.

RESPONSE: AT&T appears to be recommending the Commission adopt the components identified in 4 CSR 240-32.100(2) in defining basic local telecommunications service. This section of the Commission rules identifies service features considered to be minimum elements for basic local and interexchange telecommunications service (emphasis added). Section 386.020(4) RSMo identifies more components than 4 CSR 240-32.100(2). For example, Section 386.020(4) RSMo includes access to such services as local operator services and local directory assistance. These are important components of basic local telecommunications service. Therefore, the Commission will maintain the current reference to Section 386.020(4).

COMMENTS: The Commission Staff (“Staff”) recommends a proposed revision to 4 CSR 240-32.020(29). Staff recommends further clarifications to reflect only “0-” dialed operator service calls.

RESPONSE AND EXPLANATION OF CHANGE: The Commission concurs with Staff’s recommendation. Staff recommends the definition read as follows, “Operator assisted calls – a telecommunications service using either human or automated call intervention that is initiated by

dialing solely on a “0-” basis. Staff points out that operator service calls dialed on a “0+” basis would be technically difficult for a basic local telecommunications company to monitor.

COMMENTS: AT&T and MCI expressed concerns regarding 4 CSR 240-32.020(36). AT&T and MCI oppose a blanket obligation to report all metrics upon an exchange-specific basis. Both companies challenge the proposed rule’s private cost, which contends the proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. AT&T and MCI state the Commission should not assume there wouldn’t be a fiscal impact if these changes were adopted. Both parties state such detailed reporting is not realistic or meaningful. AT&T states that exchange-specific reporting for three (3) metrics (originating switched calls, local exchange switched call completion, and interexchange switched call completion) is redundant or impossible. One (1) switch can provide local service to more than one (1) exchange and these metrics are intended to simply monitor the performance of a switch. The switch should perform the same across each exchange. Both AT&T and MCI recommend the Commission delete the proposed definition.

Staff and the Office of the Public Counsel (“OPC”) find the proposed definition for “service objective” to be reasonable. The Commission Staff point out the term is used in the Commission’s existing rules; however it has never been defined. Staff and OPC note that existing rules contemplate exchange-specific monitoring of quality of service measures. OPC suggests such monitoring advances the protection of the ratepayer and is consistent with the public interest as identified in Section 392.185, RSMo 2000.

RESPONSE: The Commission’s existing telecommunications quality of service rules repeatedly used the term “service objective.” In this respect, the concept of defining a term used in the Commission’s rules is reasonable. The term is intended to demonstrate an acceptable quality of service level for the various service categories. The proposed definition also states that service objectives should be maintained on an exchange-specific basis or as otherwise monitored according to 4 CSR 240-32.080. According to 4 CSR 240-32.080, the existing monitoring criteria for many quality of service categories is by exchange. Such exchange-specific monitoring criteria are not being changed by this proposed rulemaking. In this respect monitoring certain quality of service measures on an exchange-specific basis should not be considered a new requirement for providers of basic local telecommunications service. In addition, the Commission has previously stated Chapter 32 requirements should apply to both incumbent and competitive local exchange companies (see August 2, 1999 *Missouri Register*, Vol. 24, No. 15, pages 1956 and 1963). Based on these considerations the proposed definition is reasonable and it should not impose a financial impact on any company if the company is currently complying with the Commission’s rules. No changes will be made to the proposed definition based on these comments.

The Commission will consider AT&T’s comments in consideration of revisions to 4 CSR 240-32.080(5)(E) originating switched calls; (F) local exchange switched call completion; and (G) interexchange switched call completion. The Commission agrees with AT&T that these three (3) metrics are intended to measure the performance of a switch. If one (1) switch is used to serve multiple exchanges then it may be appropriate to allow a company to monitor performance based

on the switch rather than by exchange. The Commission will address this aspect of AT&T's concerns in 4 CSR 240-32.080.

COMMENTS: The Missouri Telecommunications Industry Association ("MTIA") and AT&T expressed specific concerns regarding 4 CSR 240-32.020(48) the proposed definition for the term "unusual repair." Southwestern Bell Telephone, L/P/ d/b/a SBC Missouri ("SBC") and CenturyTel of Missouri, LLC ("CenturyTel") expressed support for MTIA's comments. MCI concurs with comments made by both MTIA and AT&T. MTIA and AT&T recommend the proposed definition delete the sentence, "Lack of material and manpower does not constitute unusual repair." MTIA states most carriers cannot keep all possible repair and replacement materials in inventory. In addition, many carriers have a relatively small work force. According to MTIA, if repairs exceed the immediate resources of a carrier then such a condition should be considered an external element beyond the control of the company.

Staff comments the proposed definition is intended to clarify a repair situation that may be excluded from the "Out of Service Cleared" within twenty-four (24) hours objective. The proposed definition attempts to define unusual repair as when restoration is prohibited by an external element that is beyond the control of the company. Staff claims work force and/or material limitations that prevent the company from restoring service within twenty-four (24) hours, such limitations are within the company's control and therefore should not be considered unusual repair.

RESPONSE AND EXPLANATION OF CHANGE: The term "unusual repair" is used in existing 4 CSR 240 32.080(5)(I)(2) "Clearing time – Out of Service Conditions". According to this portion of the Commission's rules, the service objective is that ninety percent (90%) or more of out-of-service trouble not requiring unusual repair shall be cleared within twenty-four (24) hours. This objective means that a company does not count a trouble report requiring unusual repair in the tabulation for this quality of service category. For example, if a company receives one hundred (100) trouble reports involving an out-of-service condition in a reporting time period and the company resolves eighty-five (85) of these one hundred (100) reports within twenty-four (24) hours the company could claim a clearing time for out of service condition of eighty-five percent (85%) (85/100) which is below the Commission's service objective. Using this same example, if a company can claim an unusual repair condition for seven (7) of the fifteen (15) trouble reports not cleared within twenty-four (24) hours then the company could report a clearing time for out of service conditions of ninety-one percent (91%) (85/(100-7)). In this respect unusual repair can improve a company's performance for this service category.

The Commission does not believe it is prudent to give any company unrestricted discretion in determining whether a specific situation can be classified as unusual repair. Nevertheless, the Commission will revise this portion of the rule. The Commission will revise the sentence "Lack of material and manpower does not constitute unusual repair" to read, "Lack of material and manpower does not constitute unusual repair unless specifically requested by a company and approved by the Commission Staff to address a unique situation or condition." In this regard a company may qualify for an unusual repair situation involving lack of material and manpower if the company contacts Staff in advance of submitting its quarterly quality of service report and

the Staff makes the determination that the company's particular situation warrants a classification of unusual repair.

MTIA's and AT&T's recommended revision would essentially make this service objective meaningless. Conceivably a company could claim lack of manpower for any trouble report with an out-of-service condition. For example, the company could simply claim the company lacked the necessary manpower to respond to any trouble report not cleared within twenty-four hours. The Commission acknowledges that most companies will also not keep all possible repair and replacement materials in inventory. Nevertheless, lack of material should not be considered unusual repair. A company's inventory level should not be considered an external element beyond the control of the company. MTIA's and AT&T's recommended revision could essentially reward a company for failing to keep any inventory because the company could then claim unusual repair for any trouble repair requiring material. Instead, unusual repair should be reserved for limited situations that are truly beyond the control of the company.

COMMENTS: Staff recommends the Commission define "out of service". This term is currently used in 4 CSR 240-32.080(5)(H)(2) but is not defined.

RESPONSE AND EXPLANATION OF CHANGE: The Commission concurs with Staff's recommendation. Staff recommends the following definition, "An out of service condition exists when a customer reports or a test reveals the customer has lost the ability to originate or receive a call."

#### **4 CSR 240-32.020 Definitions**

(29) Operator assisted calls--a telecommunications service using either human or automated call intervention that is initiated by dialing solely on a "0-" basis.

(30) Out Of Service--An out of service condition exists when a customer reports or a test reveals the customer has lost the ability to originate or receive a call.

(31) Outside plant--the telecommunications wires, cable, equipment and facilities installed along, over or under streets, alleys, highways or private rights-of-way between the central office and customers' premises or between central offices.

(32) Pay telephone--a coin or non-coin telephone installed for use by the general public from which calls can be paid for at the time they are made by means of coins, tokens, credit cards, debit cards or a billing to an alternate number.

(33) Person--person as defined in section 386.020(39), RSMo.

(34) Private shared tenant services--private shared tenant services as defined in section 386.020(40), RSMo.

(35) Rate--rate as defined in section 386.020(45), RSMo.

(36) Service--service as defined in section 386.020(47), RSMo.

(37) Service objective--an acceptable level of service for an established category of service as identified in 4 CSR 240-32.080. Service objectives should be maintained on an exchange-specific basis or as otherwise monitored according to 4 CSR 240-32.080.

(38) Station--a point of input to or output from the network, including a telephone instrument or other terminal device.

(39) Subsequent trouble report--A trouble report received for the same access line for trouble already reported but not yet cleared.

(40) Surveillance level--a sub-standard level of performance for an established category of service as identified in 4 CSR 240-32.080. A company whose service falls within a surveillance level shall immediately investigate and take appropriate corrective action to achieve and maintain the Commission's service objective.

(41) Switching--a generic term for machines that switch telephone calls from/to other telephones or trunks.

(42) Tandem--a central office where trunks are interconnected to transmit telecommunications traffic between other central offices.

(43) Tariff--a schedule of rates, services and rules approved by the commission.

(44) Telecommunications company--telecommunications company as defined in section 386.020(51), RSMo.

(45) Telecommunications facilities--telecommunications facilities as defined in section 386.020(52), RSMo.

(46) Telecommunications service--telecommunications service as defined in section 386.020(53), RSMo.

(47) Traffic--telecommunications volume, based on number of calls and duration of messages.

(48) Unlisted telephone number--a telephone number which is not listed in the paper phone directories and is not given out to callers to Directory Assistance.

(49) Unusual Repair--unusual repair exists when restoration is prohibited by an external element that is beyond the control of the company. Lack of material and manpower does not constitute unusual repair unless specifically requested by a company and approved by the Commission Staff to address a unique situation or condition.