

RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-32.080

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 240-32.080(2):

Staff recommends the change to clarify the use of surveillance levels ranges as used in 4 CSR-240.080 (5).

Summary of Changes to Rule 4 CSR 240-32.080(5)(A),

Summary of Changes to Rule 4 CSR 240-32.080(5)(B)(1),

Summary of Changes to Rule 4 CSR 240-32.080(5)(H)(3)(A):

Staff recommends the change to allow a company to petition the Staff for exclusion of orders requesting service, or request for the repair of service, that quality of service objectives are missed as a result of a natural disaster, or other elements that may be determined by Staff out of the control of the company.

Summary of Changes to Rule 4 CSR 240-32.080(5)(C)(3),

Summary of Changes to Rule 4 CSR 240-32.080(5)(E)(3),

Summary of Changes to Rule 4 CSR 240-32.080(5)(F)(3),

Summary of Changes to Rule 4 CSR 240-32.080(5)(G)(3):

The supplements added to monitoring criteria allows that companies that provide a customer service via a contracted service, the ability to report data of the contractor service company as the local service providers results.

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

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Chair

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Missouri Public Service Commission

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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 240-32.080 Service Objectives and Surveillance Levels.

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
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200 Madison St.
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Jefferson City, Missouri 65102
(573) 751-7434

Sincerely,

A handwritten signature in black ink, appearing to read "Dale Hardy Roberts", is written over a horizontal line.

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 240-32.080 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 2149-2150). 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: A revision has been suggested for 4 CSR 240-32.080(2). Concerns were expressed by various parties regarding the following portions of 4 CSR 240-32.080(5): Subsection (A) regarding orders for basic local telecommunications service; subsection (B) regarding installation commitments; subsection (C) regarding operator service; subsection (E) regarding originating switched calls; subsection (F) regarding local exchange switched call completion; and subsection (H) regarding customer trouble reports.

COMMENTS: Staff recommends the second sentence in 4 CSR 240-32.080(2) be revised.

RESPONSE: The Commission agrees with Staff's recommended revision. The revision is as follows: "If service within any exchange falls within the surveillance level, the company shall immediately investigate and take appropriate corrective action." This revision deletes "...to or below..." and inserts "within". This suggested revision reflects that surveillance level can be a high or a low number depending on the criteria being monitored. For example, inferior performance is reflected in a high number for trouble report rate while inferior performance is reflected in a low number for the company's percentage of installations for basic local service within five (5) working days.

COMMENTS: Concerns regarding 4 CSR 240-32.080(5)(A) were expressed by the Missouri Telecommunications Industry Association ("MTIA"). MTIA recommends subsection (1) be amended as follows: Service objective – that ninety percent (90%) **or more** of such orders shall be installed, except for customer-caused delays, [and] a [declared] natural disaster, **or an external element that is beyond the control of the company-**. MTIA alleges that many natural disasters that impact service are very localized and are not likely to be officially a declared natural disaster by the Governor. MTIA's proposal also recognizes the possibility of external conditions impacting this service objective.

Staff expresses support for this portion of the proposed rule. Staff claims the rulemaking, as proposed, removes ambiguities that currently exist in the interpretation of the rule. The rule's

current wording provides wide discretion to companies in claiming an exception based on a natural disaster.

RESPONSE AND EXPLANATION OF CHANGE: MTIA's proposed wording as well as the existing rule appears to provide wide discretion to companies in not counting orders not meeting the Commission's service objective. The exceptions noted in the Commission's rule allow a company to not count an order that may have failed to meet the established service objective if the failure is due to a customer-caused delay or a natural disaster. A common theme of Staff's comments is that many of the proposed revisions are appropriate because "...it will attempt to achieve greater consistency among parties in their quality of service reporting..." In this instance Staff points out the existing rule allows a company to claim it experienced a natural disaster for any storm ranging from a slight rain shower to more severe weather. Providing a company with the discretion to claim a natural disaster creates greater inconsistencies between companies in tabulating their quality of service reports.

MTIA's proposed revision appears to expand a company's discretion by including any external element that is beyond the control of the company. MTIA does not provide any examples of what external elements might be beyond the control of the company that are not already addressed in the pending rulemaking. Absent such examples it appears MTIA's proposal would provide companies with wide latitude to exclude orders in the tabulation of its quality of service report results.

The Commission's rules should be worded in such a manner to ensure consistent interpretation and consistent tabulation of quality of service reports. MTIA's proposed revisions do not appear to ensure companies will have a consistent interpretation of when to exclude orders based on a natural disaster or if an external element is beyond the control of the company. Based on this consideration the Commission rejects MTIA's proposed revision. Nevertheless, the Commission will modify the proposed rule for 4 CSR 240-32.080(5)(A)(1) as follows, "Service objective – that ninety percent (90%) or more of such orders shall be installed, except for customer-caused delays, delays caused by a declared natural disaster, or a specific exemption requested by a company and approved by the Commission Staff to address a unique situation or condition;"

COMMENTS: Concerns were expressed by MTIA regarding 4 CSR 240-32.080(A)(1). MTIA recommends this portion of the rule be amended as follows: "Within five (5) working days after the customer ordered service; **or within seven (7) working days after the customer ordered service if the installation involves excavation which requires mandatory notice of intent to excavate to the state notification center pursuant to section 319.026 RSMo; or...**" MTIA states service providers are required by law to notify the state "one-call" notification center of their intent to excavate in an area at least two (2) working days before commencement of the excavation.

RESPONSE: MTIA's proposed revision clearly makes it easier for companies to meet the Commission's service objective. MTIA's proposed revision would also mean that customers might have to wait longer for service to be installed. For example a company could install a customer's service in seven (7) working days rather than the current five (5) working days and still comply with the Commission's service objective. The Commission is concerned about the

customer impact of MTIA's proposed revision especially when most companies are able to easily meet the Commission's existing five-(5-)day service objective. The statewide reported average for the past thirty (30) months is that 94% of all orders for basic local telecommunications service are completed within five (5) working days. This statewide average easily exceeds the Commission's existing service objective that of ninety percent (90%) of all orders for basic local telecommunications services are completed within five working days. Although Chapter 319, RSMo does establish excavation requirements, the Commission has not observed that these requirements have actually made it more difficult to achieve the existing service objective. However, in fairness to the position proposed by MTIA, Missouri law does appear to give third-(3rd-) and fourth-(4th-)class counties until January 1, 2005 to fully comply with these requirements. In this respect we may not fully know the full impact of these excavation requirements until after this date. The Commission will continue to monitor the situation to see if MTIA's proposal deserves further consideration. In the meantime the Commission rejects MTIA's proposal and will maintain the existing five-(5-)day service objective.

COMMENTS: Concerns were expressed by MTIA regarding 4 CSR 240-32.080(5)(B). MTIA recommends this portion of the Commission's rules be amended as follows, "(5)(B) Installation [commitments] – all customers shall be given a [commitment of when] **date by which** service will be installed in accordance with 4 CSR 240-32.070(4) –

1. Service objective – that ninety-five percent (95%) or more of [commitments for] installations of basic local telecommunications service [and regrade of] service shall be [met], **made by the date provided the customer**, except for customer-caused delays, [and] a [declared] natural disaster[s], **or an external element that is beyond the control of the company**. MTIA states that these revisions are proposed based on MTIA's previous recommendations.

RESPONSE AND EXPLANATION OF CHANGE: MTIA's rationale for these proposed changes appears to be based on MTIA's comments for 4 CSR 240-32.070 and 4 CSR 240-32.080(5)(A). For the same reasons previously expressed by the Commission, MTIA's proposed revisions will be rejected. Nevertheless, the Commission will modify the proposed rule for 4 CSR 240-32.080(5)(B)(1) as follows, "Service objective – that ninety-five percent (95%) or more of commitments for installation of basic local telecommunications service shall be met, except for customer-caused delays, delays caused by a declared natural disaster, or a specific exemption requested by a company and approved by the Commission Staff to address a unique situation or condition;"

COMMENTS: Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC") did not strongly oppose the proposed amendments to 4 CSR 240-32.080(C) if the company can calculate performance in the following manner: A carrier measures the time from when an incoming call appears on an operator's switchboard to when the operator answers the call. The carrier could then combine this measurement with the carrier's statewide switch delay time and report this aggregated measurement.

RESPONSE: SBC's method of calculating performance for this category is reasonable and it will be adopted.

COMMENTS: AT&T Communications of the Southwest, Inc. (“AT&T”) expresses concerns regarding 4 CSR 240-32.080(5)(C)(3). MCI concurs with AT&T’s comments. AT&T states some competitive local exchange carriers resell the services of incumbent local exchange carriers to provide their own retail services. In those instances, the performance of the service being resold will be reported in the incumbent local exchange carrier’s quality of service report as the incumbent local exchange carrier does not separate the results of the performance of wholesale services from its own retail performance. In this regard AT&T claims the competitive local exchange carrier and incumbent local exchange carrier would be reporting the exact same information. If the incumbent local exchange carrier does not make the information available to the competitive local exchange carrier, the competitive local exchange carrier would be unable to report this information.

To address such situations, AT&T recommends the following wording for 4 CSR 240-32.080(5)(C)(3): “Monitoring criteria – continuously, on a company-wide basis, if a company provides this service by contractor service, the company providing the basic local service shall monitor the contractor’s performance and report it as the local service provider’s results. **In the event the contractor of this service is an incumbent local exchange carrier and does not disaggregate its own retail performance from the wholesale performance, the retail provider of basic local exchange service may identify the contractor of this service and may concur in the performance of the contractor’s service.**”

RESPONSE AND EXPLANATION OF CHANGE: AT&T’s proposed revision is reasonable and will be adopted. The rule should read as follows: “Monitoring criteria – continuously, on a company-wide basis, if a company provides this service by contractor service, the company providing the basic local service shall monitor the contractor’s performance and report it as the local service provider’s results. In the event the contractor of this service is an incumbent local exchange carrier and does not disaggregate its own retail performance from the wholesale performance, the retail provider of basic local exchange service may identify the contractor of this service and may concur in the performance of the contractor’s service.”

COMMENTS: AT&T’s comments for 4 CSR 240-3.500(21) and 4 CSR 240-32.020(36) implied certain revisions to 4 CSR 240-32.080(5)(E) originating switched calls; (F) local exchange switched call completion; and (G) interexchange switched call completion. AT&T states these metrics are designed to monitor the performance of a switch. AT&T claims that in many instances a single switch is used to provide basic local exchange service to multiple exchanges. AT&T states that monitoring the performance of a switch that serves multiple exchanges on an exchange specific basis is either redundant or impossible, as the switch will perform the same across each exchange.

RESPONSE: The Commission agrees with AT&T that these three (3) metrics are intended to measure the performance of a switch. The current monitoring criteria contemplate two (2) methods of monitoring. The preferred method is to continuously monitor the switch. For example, dial tone delay or dial tone denial reports could be used for monitoring originating switched calls. Likewise, switch call completion reports could be used to monitor local exchange switched call completion. Call blockage reports could be used to monitor interexchange switched call completion. These reports may track all the traffic associated with

the switch. In other words, if a switch serves multiple exchanges, these reports may analyze traffic from all exchanges served by the switch. An alternative method of monitoring is if the company lacks the capability to produce such reports. In such instances the company is expected to conduct at least twenty-five (25) test calls, by exchange. This manual alternative method should only be conducted if the company lacks the technical ability to continuously monitor the performance of the switch. The Commission will not modify the exchange-specific monitoring for this alternative method.

To try to minimize confusion on this issue, the Commission will further revise the rule wording in the following sections.

4 CSR 240-32.080(5):

(E)3. Monitoring criteria—continuously, via dial tone delay or dial tone denial reports. These reports can monitor the switch’s traffic either on an exchange-specific basis or switch-wide basis. If a company lacks the capability to produce such reports, the company should produce a report based on twenty-five (25) test calls, by exchange. If a company provides this service by contractor service, the company providing the basic local service shall monitor the contractor’s performance and report it as the local service provider’s results.

(F)3. Monitoring criteria—continuously, via switch call completion reports. These reports can monitor the switch’s traffic either on an exchange-specific basis or switch-wide basis. If a company lacks the capability to produce such reports, the company should produce a report based on twenty-five (25) test calls, by exchange. If a company provides this service by contractor service, the company providing the basic local service shall monitor the contractor’s performance and report it as the local service provider’s results.

(G)3. Monitoring criteria—continuously, via call blockage reports. These reports can monitor the switch’s traffic either on an exchange-specific basis or switch-wide basis. If a company lacks the capability to produce such reports, the company should produce a report based on twenty-five (25) test calls, by exchange. If a company provides this service by contractor service, the company providing the basic local service shall monitor the contractor’s performance and report it as the local service provider’s results.

COMMENTS: MTIA recommends proposed revisions to 4 CSR 240-32.080(5)(H). MTIA recommends this portion of the rule be amended as follows: “(5)(H) Customer trouble reports **regarding basic local telecommunications service** —” MTIA states this proposed revision is consistent with 4 CSR 240-3.550. MTIA states companies should be able to exclude trouble reports related to non-basic services.

RESPONSE: The Commission rejects MTIA’s proposed revision because a company’s trouble report rate should include trouble reports related to non-basic services. If a problem exists with any of the non-basic services offered by a company it should be reflected in the company’s trouble report rate. In this respect MTIA’s proposed revision would not accurately reflect a company’s quality of service provided to customers. The proposed rule allows a company to not count certain trouble reports such as trouble reports specifically caused by CPE or inside wire.

COMMENTS: MTIA recommends proposed revisions to 4 CSR 240-32.080(5)(H)(1)(D). MTIA recommends this portion of the rule be amended as follows: “(5)(H)1.D. The service objective and surveillance levels do not apply to trouble caused by **elements external to the provider’s network (e.g., CPE, [and] inside wire, etc.,)** or when the report is a subsequent trouble report for the same access line. In order to exclude trouble reports caused by **elements external to the provider’s network, the provider must complete trouble isolation tests to verify that the cause of the trouble does not reside on the provider’s network.** [CPE or inside wire the company must specifically determine the cause is from CPE or inside wire. Trouble reports whereby a company simply tests the line and produces a “test ok” or “found ok” condition are still countable trouble reports and are not excludable from the company’s trouble report rate;]. MTIA’s rationale for these proposed revisions is that providers do not control and many times cannot test elements beyond their own network. A service provider, however, can verify through network testing that the trouble does not reside on its own network.

RESPONSE: The Commission recognizes that isolating trouble can be difficult. In some instances a company’s test results may reveal no problems. For example, a wet cable may create trouble on a customer’s line; however the trouble may mysteriously resolve itself as sunshine dries the cable. In such instances the company’s test results may ultimately show faulty facilities to be OK. MTIA’s proposed revisions would allow a company to not count such trouble reports in calculating its trouble report rate. In contrast to MTIA’s recommendation, a company should only be allowed to not count a particular trouble report in calculating the company’s trouble report rate if the company can identify the source of the problem and if the source is outside the company’s network. For this reason, the Commission rejects MTIA’s proposed revision.

COMMENTS: MTIA expresses concerns regarding 4 CSR 240-32.080(H)(3). MTIA recommends this portion of the Commission’s rules be revised as follows:

“3. Repair – All customers shall be given a date by which service will be restored in accordance with 4 CSR 240-32.070(4) –

A. Service objective – that ninety percent (90%) or more of commitments for clearing trouble shall be met, except for customer-caused delays, [and] a declared natural disaster[s], **or an external element that is beyond the control of the company.** ”

MTIA recommends these revisions because commitments have been difficult to define in a way that is commonly understood by the industry. MTIA also states many natural disasters are very localized and are not likely to be officially “declared.” The Commission should recognize the possibility of external conditions impacting the attainment of the service objective.

In contrast to MTIA’s comments, the Office of the Public Counsel (“OPC”) strongly supports the proposed rulemaking’s requirement for a company to give customers time commitments to restore service and make repairs. The OPC states the proposed rulemaking advances the protection of the ratepayer and is consistent with the public interest as identified in Section 392.185, RSMo 2000.

RESPONSE AND EXPLANATION OF CHANGE: The Commission rejects MTIA's proposed revisions for reasons previously expressed in this rulemaking (see Commission response for 4 CSR 240-32.070). Nevertheless the Commission will modify the proposed rule for 4 CSR 240-32.080(5)(H)3. as follows, "Service objective – that ninety percent (90%) or more of commitments for clearing trouble shall be met, except for customer-caused delays, delays caused by a declared natural disaster, or a specific exemption requested by a company and approved by the Commission Staff to address a unique situation or condition;"

4 CSR 240-32.080 Service Objectives and Surveillance Levels

(2) Each company is expected to provide service within each exchange or as otherwise monitored in this section that meets or exceeds the service objective level. If service within any exchange falls within the surveillance level, the company shall immediately investigate and take appropriate corrective action. The identified problem and the corrective action taken shall be submitted to the commission with the company's quarterly report.

(5) The service objectives, surveillance levels and monitoring criteria for the following categories are:

(A) Orders for basic local telecommunications service—

1. Service objective—that ninety percent (90%) or more of such orders shall be installed, except for customer-caused delays, delays caused by a declared natural disaster or a specific exemption requested by a company and approved by the Commission Staff to address a unique situation or condition—

A. Within five (5) working days after the customer ordered service; or

B. On or by the date requested if it is at least five (5) working days after the date the customer ordered service;

2. Surveillance level—eighty-five percent (85%) or below; and

3. Monitoring criteria—continuously, by exchange;

(B) Installation commitments—all customers shall be given a commitment of when service will be installed in accordance with 4 CSR 240-32.070(4) —

1. Service objective—that ninety-five percent (95%) or more of commitments for installation of basic local telecommunications service shall be met, except for customer-caused delays, delays caused by a declared natural disaster or a specific exemption requested by a company and approved by the Commission Staff to address a unique situation or condition—

2. Surveillance level—ninety percent (90%) or below; and

3. Monitoring criteria—continuously, by exchange;

(C) Operator assisted calls—

1. Service objective—that one hundred percent (100%) of operator assisted calls, shall be answered on average within twelve (12) seconds or less of dialing "0". This objective incorporates the required switch delay for 0- calls;

2. Surveillance level—fourteen (14) seconds or more; and

3. Monitoring criteria—continuously, on a company-wide basis, if a company provides this service by contractor service, the company providing the basic local service shall monitor the contractor's performance and report it as the local service provider's results. In the event the contractor of this service is an incumbent local exchange carrier and does not disaggregate its own retail performance from the wholesale performance, the retail provider of basic local

exchange service may identify the contractor of this service and may concur in the performance of the contractor's service.

(D) Customer assistance calls—

1. Service objective—that the average speed of answer for calls to the business office or repair bureau shall be fifteen (15) seconds or less;

2. Surveillance level—that average speed of answer for calls to the business office or repair bureau exceeding twenty (20) seconds on a continuous basis indicates a need for investigation and corrective action; and

3. Monitoring criteria—continuously, on a company-wide basis via an interactive voice system, if not possible, manual monitoring of twenty-five (25) incoming calls to a service center will be conducted on a monthly basis;

(E) Originating switched calls—

1. Service objective—that ninety-eight percent (98%) or more of calls shall receive a dial tone within three (3) seconds;

2. Surveillance level—ninety-seven and four-tenths percent (97.4%) or less; and

3. Monitoring criteria—continuously, via dial tone delay or dial tone denial reports. These reports can monitor the switch's traffic either on an exchange-specific basis or switch-wide basis. If a company lacks the capability to produce such reports, the company should produce a report based on twenty-five (25) test calls, by exchange. If a company provides this service by contractor service, the company providing the basic local service shall monitor the contractor's performance and report it as the local service provider's results;

(F) Local exchange switched call completion—

1. Service objective—that ninety-eight percent (98%) or more of local exchange switched calls shall be completed without encountering a blockage or equipment busy condition;

2. Surveillance level—ninety-five percent (95%) or less; and

3. Monitoring criteria—continuously, via switch call completion reports. These reports can monitor the switch's traffic either on an exchange-specific basis or switch-wide basis. If a company lacks the capability to produce such reports, the company should produce a report based on at least twenty-five (25) test calls, by exchange. If a company provides this service by contractor service, the company providing the basic local service shall monitor the contractor's performance and report it as local service provider's results;

(G) Interexchange switched call completion—

1. Service objective—that ninety-eight percent (98%) or more of interexchange switched calls shall be completed without encountering a blockage or equipment busy condition;

2. Surveillance level—ninety-five percent (95%) or less; and

3. Monitoring criteria—continuously, via call blockage reports. These reports can monitor the switch's traffic either on an exchange-specific basis or switch-wide basis. If a company lacks the capability to produce such reports, the company should produce a report based on twenty-five (25) test calls, by exchange. If a company provides this service by contractor service, the company providing the basic local service shall monitor the contractor's performance and report it as the local service provider's results; and

(H) Customer trouble reports—

1. Frequency—

A. Service objective—that the frequency shall not exceed six (6) reports for every one hundred (100) access lines each month;

B. Surveillance level—shall not exceed eight (8) reports for every one hundred (100) access lines each month;

C. Monitoring criteria—monthly, by exchange; and

D. The service objective and surveillance levels do not apply to trouble caused by CPE and inside wire or when the report is a subsequent trouble report for the same access line. In order to exclude trouble reports caused by CPE or inside wire the company must specifically determine the cause is from CPE or inside wire. Trouble reports whereby a company simply tests the line and produces a “test ok” or “found ok” condition are still countable trouble reports and are not excludable from the company’s trouble report rate;

2. Clearing time—Out of Service Conditions

A. Service objective—that ninety percent (90%) or more of out-of-service trouble not requiring unusual repair shall be cleared within twenty-four (24) hours;

B. Surveillance level—eighty-five percent (85%) or less; and

C. Monitoring criteria—monthly by exchange; and

3. Repair commitments—All customers shall be given a commitment of when service will be restored in accordance with 4 CSR 240-32.070(4)-

A. Service objective—that ninety percent (90%) or more of commitments for clearing trouble shall be met, except for customer-caused delays and delays caused by a declared natural disaster or a specific exemption requested by a company and approved by the Commission Staff to address a unique situation or condition—

B. Surveillance level—eighty-five percent (85%) or less; and

C. Monitoring criteria—monthly, by exchange.