

Robin Carnahan

Secretary of State

Administrative Rules Division

RULE TRANSMITTAL

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MAY 06 2005

SECRETARY OF STATE
ADMINISTRATIVE RULES

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

A. Rule Number 4 CSR 240-29.060

Diskette File Name Final Rule 29.060

Name of person to call with questions about this rule:

Content Keith R. Krueger Phone 573/751-7510 FAX 573/751-9285

E-mail address keith.krueger@psc.mo.gov

Data entry Carla Schnieders Phone 573-522-9038 FAX 573-526-6969

E-mail address carla.schnieders@psc.mo.gov

Interagency mailing address GOB, 200 Madison Street, 8th Floor, J.C. MO 65102

Statutory Authority Sections 386.040 and 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. CHECKLIST guide for rule packets:

☒ This transmittal completed

☒ Cover letter

☐ Affidavit

☐ Small business impact statement

☐ Fiscal notes

☐ Forms, number of pages _____

☐ Authority section with history of the rule

☐ Public cost statement

☐ Private cost statement

☐ Hearing date _____

C. RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking (choose one) ☐ rule, ☐ amendment, ☐ rescission, or ☐ termination

MUST include effective date _____

☐ Proposed Rulemaking (choose one) ☐ rule, ☐ amendment, or ☐ rescission

☒ Order of Rulemaking (choose one) ☒ rule, ☐ amendment, ☐ rescission, or ☐ termination

MUST complete page 2 of this transmittal

☐ Withdrawal (choose one) ☐ rule, ☐ amendment, ☐ rescission or ☐ emergency

☐ Rule action notice ☐ In addition ☐ Rule under consideration

D. SPECIFIC INSTRUCTIONS: Any additional information you may wish to provide to our staff _____

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-29.060

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. Give an explanation of each section, subsection, etc. which has been changed since the proposed rulemaking was published in the Register.

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.

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Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 29 – Enhanced Record Exchange Rules

MAY 06 2005

SECRETARY OF STATE
ADMINISTRATIVE RULES

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

**4 CSR 240-29.060 Special Privacy Provisions for End Users Who Block Their
Originating Telephone Number is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). No change is made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (3) days after publication in the *Code of State Regulations*.

COMMENT: The Telecommunications Department Staff (Staff) recommends this section be implemented without change.

COMMENT: Since the Commission has recently enacted 4 CSR 240-32.190, SBC reflects that additional rules for Caller ID blocking are unnecessary. SBC states that if it is determined that changes are needed to the Caller ID rules, such changes should be made to Chapter 32.

COMMENT: CenturyTel writes that this section is unnecessary as Caller ID rules are contained in Chapter 32.

COMMENT: Sprint opines that this section is duplicative of provisions contained in Chapter 32.

RESPONSE: We find that this section contains additional requirements unique to carrier-to-carrier delivery of Caller ID, which are not contained in Chapter 32. The additional requirements are necessary to prevent carriers from stripping Calling Party Number (CPN) in instances where originating callers block delivery of Caller ID. In such situations, the CPN is delivered to the terminating office but privacy indicators preclude delivery of the Caller ID to the called party. We will order this section implemented without change.



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

STEVE GAW

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
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573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

May 6, 2005

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

Dear Secretary Carnahan:

Re: **4 CSR 240-29.060 Special Privacy Provisions for End Users Who Block Their
Originating Telephone Number**

CERTIFICATION OF ADMINISTRATIVE RULE

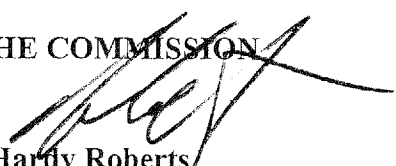
I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Department of Economic Development, Public Service Commission on this 6th day of May, 2005.

Statutory Authority: Sections 386.040 and 386.250 RSMo 2000

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

Keith R. Krueger, Deputy General Counsel
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, Missouri 65102
(573) 751-4140
keith.krueger@psc.mo.gov

BY THE COMMISSION


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

Robin Carnahan
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

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SECRETARY OF STATE
ADMINISTRATIVE RULES

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

A. Rule Number 4 CSR 240-29.070

Diskette File Name Final Rule 29.070

Name of person to call with questions about this rule:

Content Keith R. Krueger Phone 573/751-7510 FAX 573/751-9285

E-mail address keith.krueger@psc.mo.gov

Data entry Carla Schnieders Phone 573-522-9038 FAX 573-526-6969

E-mail address carla.schnieders@psc.mo.gov

Interagency mailing address GOB, 200 Madison Street, 8th Floor, J.C. MO 65102

Statutory Authority Sections 386.040 and 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. CHECKLIST guide for rule packets:

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☒ Cover letter

☐ Affidavit

☐ Small business impact statement

☐ Fiscal notes

☐ Forms, number of pages _____

☐ Authority section with history of the rule

☐ Public cost statement

☐ Private cost statement

☐ Hearing date _____

C. RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking (choose one) ☐ rule, ☐ amendment, ☐ rescission, or ☐ termination

MUST include effective date _____

☐ Proposed Rulemaking (choose one) ☐ rule, ☐ amendment, or ☐ rescission

☐ Order of Rulemaking (choose one) ☒ rule, ☐ amendment, ☐ rescission, or ☐ termination

MUST complete page 2 of this transmittal

☒ Withdrawal (choose one) ☒ rule, ☐ amendment, ☐ rescission or ☐ emergency)

☐ Rule action notice ☐ In addition ☐ Rule under consideration

D. SPECIFIC INSTRUCTIONS: Any additional information you may wish to provide to our staff _____

Small Business Regulatory
Fairness Board (DED) Stamp

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RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-29.070

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. Give an explanation of each section, subsection, etc. which has been changed since the proposed rulemaking was published in the Register.

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*.

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Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 29 – Enhanced Record Exchange Rules

MAY 06 2005

SECRETARY OF STATE
ADMINISTRATIVE RULES

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission withdraws a rule as follows:

4 CSR 240-29.070 Special Provisions for Wireless-Originated Traffic Transmitted over the LEC-to-LEC Network is withdrawn.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). The proposed rule is withdrawn.

4 CSR 240-29.070(1)

COMMENT: T-Mobile, Nextel, and Cingular (Joint Wireless Carriers) state that this section acknowledges the inability of wireless carriers to comply with Section (2) of this rule. Joint Wireless Carriers express that real time routing on demarcation point is impossible and in many cases the calling number has been ported. Joint Wireless Carriers contend this section is even more unreasonable given the blocking requirements in other aspects of this chapter.

RESPONSE: The Commission determines that these matters are best addressed in interconnection agreements. Thus, we will withdraw this rule.

4 CSR 240-29.070(2)

COMMENT: SBC states that this section impermissibly interferes with its interconnection obligations as set forth in the Telecommunications Act. SBC states that incumbent local exchange carriers are required to provide interconnection to wireless carriers who request it for the transmission and routing of telephone exchange service or exchange access service. SBC also questions the Commission's authority under Missouri law to impose such restrictions on wireless carriers.

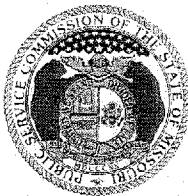
COMMENT: Sprint states this section should be eliminated and refers to its previous comments.

COMMENT: Joint Wireless Carriers state this section would require "triple screening" and force comparison of cell sites to the telephone number being dialed. Joint Wireless Carriers again state that Missouri law prohibits the Commission from enactment of this section. In footnote 36, Joint Wireless Carriers express confusion about the switching

functions of local exchange and interexchange carriers, especially when a company holds both types of Missouri certificates of authority.

RESPONSE: The Commission determines that the matters contained in this rule are best determined in interconnection agreements. We therefore, withdraw this section in its entirety.

RESPONSE: The Commission determines that these matters are best addressed in interconnection agreements. Thus, we will withdraw this rule.



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

STEVE GAW

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

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Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

May 6, 2005

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

Dear Secretary Carnahan:

**Re: 4 CSR 240-29.070 Special Provisions for Wireless-Originated Traffic Transmitted
over the LEC-to-LEC Network**

CERTIFICATION OF ADMINISTRATIVE RULE

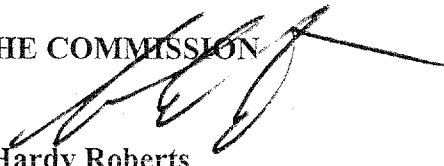
I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Department of Economic Development, Public Service Commission on this 6th day of May, 2005.

Statutory Authority: Sections 386.040 and 386.250 RSMo 2000

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

Keith R. Krueger, Deputy General Counsel
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, Missouri 65102
(573) 751-4140
keith.krueger@psc.mo.gov

BY THE COMMISSION


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

Robin Carnahan
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

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ADMINISTRATIVE RULES

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

A. Rule Number 4 CSR 240-29.080

Diskette File Name Final Rule 29.080

Name of person to call with questions about this rule:

Content Keith R. Krueger Phone 573/751-7510 FAX 573/751-9285

E-mail address keith.krueger@psc.mo.gov

Data entry Carla Schnieders Phone 573-522-9038 FAX 573-526-6969

E-mail address carla.schnieders@psc.mo.gov

Interagency mailing address GOB, 200 Madison Street, 8th Floor, J.C. MO 65102

Statutory Authority Sections 386.040 and 386.250 Current RSMo date 2000

Date filed with the Joint Committee on Administrative Rules Exempt per Sections 536.024
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Fairness Board (DED) Stamp

JCAR Stamp

RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-29.080

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☒ Statutory 30 days

Specific date _____

1b. Does the Order of Rulemaking contain changes to the rule text?

☐ YES

☒ NO

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Division 240 – Public Service Commission
Chapter 29 – Enhanced Record Exchange Rules

MAY 06 2005

SECRETARY OF STATE
ADMINISTRATIVE RULES

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

**4 CSR 240-29.080 Use of Terminating Record Creation for LEC-to-LEC
Telecommunications Traffic is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). No change is made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

COMMENT: Sprint recommends elimination of this rule in its entirety. Sprint opines that there is no demonstration or evidence to support this initiative. Sprint acknowledges that originating record-creation is not perfect; however, Sprint maintains that terminating record-creation is a solution that will lead to other problems. Sprint attributes a \$400,000 fiscal impact to this rule.

COMMENT: SBC states this section will create confusion, increase costs, and increase billing disputes. SBC opines that in many instances, terminating records cannot identify the appropriate originating party. SBC asserts that terminating recordings do not differentiate the originating switch owner from the competitor utilizing the switch; SBC offers UNE-P and Type I wireless traffic as examples. As a result, according to SBC, use of terminating records will cause improper billing.

SBC states that it will incur \$1.78 million in equipment and labor expense to develop, reconcile, and process terminating created records. Additionally, according to SBC, it will incur approximately \$500,000 in annual personnel costs. SBC contends that Staff inappropriately excluded all of these reported costs in the fiscal impact statement. Instead of creating a terminating records system, SBC recommends the Commission revise this section as follows:

Terminating telecommunications companies may obtain billing records or other billing information from transiting carriers for use in billing the originating carrier. Transitng companies may obtain billing information from other transiting carriers or terminating carriers for use in billing the originating carrier. It is the responsibility of both transiting and terminating companies to issue accurate bills to the originating carrier. It is the responsibility of the originating carrier to (1) compensate the transiting carrier(s) for providing the transiting function; and (2) compensate the terminating carrier for providing the terminating function.

Socket Telecom, XO Communications, and Big River Telephone Company (Socket, XO, and Big River) state particular support for this rule, which permits use of terminating records to generate accurate billing invoices. Socket, XO, and Big River opine that the current practice of relying on originating records simply does not work in today's environment, especially when numbers are ported. Socket, XO, and Big River describe the process of originating record-creation, and cite to the use of the called party's NPA-NXX code as the basis for identifying the terminating carrier. Socket, XO and Big River state that such records are then used by the terminating carrier to generate exchange access bills to the originating carrier. Socket, XO, and Big River complain that such systems fall apart when numbers are ported between carriers, because the terminating carrier is not correctly identified by the NPA-NXX code. According to Socket, XO, and Big River, the result is that one local exchange carrier receives payment to which it is not entitled, and another local exchange carrier fails to receive the compensation to which it is rightfully entitled. This situation is particularly onerous, according to Socket, XO, and Big River, because the two involved local exchange carriers are direct competitors. Socket, XO, and Big River state that use of terminating records would enable the proper terminating carrier to generate its own billing records and receive payment for the calls it terminates. Socket, XO, and Big River state that this rule is a critical step in the right direction if Missouri is going to have facility-based competition.

COMMENT: The Telecommunications Department Staff (Staff) recommended this rule be implemented without change. Staff states the current practice of creating records at an originating or tandem office does not recognize the many instances where the call terminates to a ported telephone number. Consequently, according to the Staff, originating and tandem-created billing records are frequently in error. Staff reflects that only the terminating carrier may know for certain where a telephone call physically terminates, and on whose network. Staff states its opinion that terminating carriers should have the ability to create accurate billing records.

Staff asserts its belief that number portability will challenge billing record-creation irrespective of whether the billing records are recorded at the beginning, in the middle, or at the end of a telephone call. Staff reminds us that it is customary in our economy for those providing a service to also bill for the service, and contrary to standard practice for those receiving a service to also bill for the service. Staff points to 4 CSR 240-29.100 as a dispute resolution process that has been established, and offers that rule as a mechanism to be used in the event number portability causes billing problems. Staff states the dispute resolution process is similar to the processes used in various interconnection agreements, and offers Sprint's Master Agreement as an example. Staff also points to SBC's Accessible Letter CLEC03-346 as evidence that SBC implemented a terminating record-creation process for local exchange carriers in its five-state region on December 1, 2003. Lastly, the Staff opines that terminating record-creation is recognized by Sprint, and offers Sprint's Wireless Termination Service tariff as an example. For these reasons, the Staff supports accurate terminating record-creation wherever possible or appropriate.

COMMENT: The Small Telephone Company Group (STCG) states that its concerns regarding the accuracy of originating records have been well documented over the last five years. The STCG asserts its support for the ability of terminating carriers to utilize information received from the originating and/or transiting carriers to prepare category 11-01-XX records to generate bills for traffic termination. The STCG opines that this rule provision is consistent with standard billing practices where service providers generate bills for the use of their services, and the STCG supports this rule.

COMMENT: The Missouri Independent Telephone Company Group (MITG) characterizes originating record-creation as the "fox guarding the henhouse" approach. The MITG states that for the last five years its member companies have suffered the loss of compensation and increased collection expenses attendant with an originating billing records system. The MITG asserts that some originating records are not provided with individual call detail, which renders the terminating local exchange carriers incapable of reconciling billing records to its own switch recordings. The MITG points to Texas PUC Docket 21982 as recognizing the national economic practice whereby the party remitting a service is also the party to record and bill for the service it provides. According to the MITG, the Texas PUC ordered that the terminating carrier be authorized to bill from its own recordings because such terminating records impose less cost, and are more efficient and less burdensome than other systems. According to the MITG, allowing terminating carriers to bill from its own call information, rather than relying on upstream carriers to provide billing records, represents a needed improvement.

RESPONSE: We cannot accept the fiscal impact or problematic assumptions inherent in Sprint's comments. We note that Sprint's own interconnection agreements contemplate the use of terminating records creation. For example, paragraph 64.1 of Sprint's December 9, 2002 Master Interconnection Agreement states:

64 USAGE MEASUREMENT

64.1 Each party shall calculate terminating interconnection minutes of use *based on standard AMA recordings made within each party's network*, these recordings being necessary for each party to generate bills to the other party. (Emphasis added).

We thus conclude that Sprint has already put in place the systems necessary to record traffic and process billing invoices generated on the basis of terminating switch recordings.

We note that SBC's suggestion would require both transiting carriers and terminating carriers to issue *accurate* bills to originating carriers. We find it disconcerting that SBC's suggestion places no such requirement on the bills or records SBC issues to terminating carriers. We see nothing in the record before us to refute the comments of Socket, XO, and Big River that originating office and tandem office created billing records are frequently inaccurate because of ported numbers. We agree with the MITG that the ability of terminating carriers to bill from their own records, rather than relying on upstream carriers, represents a needed improvement. We note our June 10, 1999 Report

and Order in Case No. TO-99-254 which characterized as a “worthwhile goal” the opportunity for terminating carriers to capture more information about calls terminated to them. We note that terminating record-creation has been examined and implemented in other jurisdictions such as Kansas and Texas. We note the revised arbitration award in Docket No. 21982 as establishing a terminating record-creation process in Texas. We note SBC’s Accessible Letter CLEC03-346 implementing a terminating record-creation process in its five-state area beginning on December 1, 2003. We concur with the Texas Commission’s statements that there may be disagreement over the content and/or accuracy of a carrier’s termination records and, as with the Texas Commission, we expect that such disputes will be settled among the parties. We also note that the Texas Commission has concluded that use of terminating records is a more efficient and less burdensome method to track the exchange of traffic, and that terminating records impose less cost upon terminating carriers. While the record before us is insufficient to make similar conclusions in Missouri, we do agree with the Staff and the Texas Commission’s statements that it is customary in our economy for those providing a service to also bill for the service. We find antithetical to ordinary commerce the practice of permitting those incurring charges to also be those who generate the bill for services rendered.

We caution any carrier that may wish to engage in Category 11 record-creation based on information received at the terminating office that our rules require accurate bill rendition. We expect all carriers to produce accurate billing records irrespective of the location where the billing information is captured. When disputes arise, we expect parties to work together to resolve issues. When the parties cannot reach agreement, we invite those parties to avail themselves of the dispute resolution processes contained within the various interconnection agreements and/or our local interconnection rules.

We disagree that terminating records are any more inaccurate for recording UNE-P and Type I wireless calls than originating records or tandem created records. We note that all resellers, including UNE-P providers, are required by the North American Numbering Plan Administrator to obtain an Operating Carrier Number (OCN). Notwithstanding SBC’s previous comments that the Federal Communications Commission (FCC) has eliminated UNE-P on a going-forward basis, we find that the addition of an OCN has eliminated the problem SBC attempts to explain. As was explained in the Task Force meetings, OCNs can be used to distinguish UNE-P providers from the incumbent providers. As has also been explained, in the affidavit of SBC witness McPhee in Case No. TO-2005-0166, carriers may also utilize the Local Exchange Routing Guide and the Local Number Portability (“LNP”) database to help identify the appropriate party to bill. The Commission would also note its expectation that wireless number portability has and will continue to reduce demand for Type I wireless interconnections. However, to the extent Type I connections may still be used, Type I wireless connections can be identified by an OCN in all but the smallest blocks of numbers. If, after implementing these measures, SBC still finds it difficult to identify Type I wireless calls, SBC is encouraged to work with industry participants to address issues surrounding the identification of Type I wireless connections. For example, SBC may want to explore the possibility of using SS7 parameters to identify responsible parties in much the same manner as the Jurisdiction Information Parameter (JIP) may be used to identify the appropriate

jurisdiction. Use of these and similar parameters will enable parties to work together to at first identify and, if necessary, refute any potential instance of false billing related to Type I wireless calls.

We note that our rule permitting terminating record-creation requires creation of Category 11-01-XX records. We also note that Category 11-01-XX records are the type of records long used by local exchange carriers to bill interexchange carriers for long distance traffic traversing the interexchange carrier network. We find this type of record to be widely used and the most accepted form of record-creation among all carriers. We also note that creation of terminating records is strictly voluntary according to our rule. Because implementation of terminating records is voluntary, and because all carriers are already using Category 11-01-XX records as an accepted basis for establishing billing invoices, we cannot accept that carriers will have any fiscal impact associated with our rule. This is especially true for SBC, because it has already implemented a terminating record-creation process in its five-state area pursuant to the Texas arbitration award. We conclude that receiving an accurate invoice compiled from a Category 11 record generated at a terminating end office imposes no greater fiscal impact on SBC, Sprint, and CenturyTel than does a similar invoice compiled from information generated at a tandem office. Thus, we conclude SBC, Sprint, and CenturyTel will have no fiscal impact from this rule.

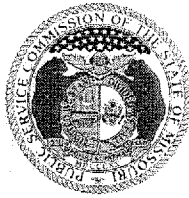
Lastly, we reject SBC's contention that use of terminating records will cause confusion, increase costs, and increase billing disputes. In particular, we reject as unsubstantiated SBC's claim of a \$1.78M fiscal impact to develop, reconcile, and process terminating created records. We note SBC's replacement Missouri Section 271 Interconnection Agreement (M2A) offering to competitive local exchange carriers as posted on SBC's Web site. Specifically, "Attachment Compensation" contains the following offerings:

10.1 In SBC Missouri each party, unless otherwise agreed, will calculate terminating interconnection minutes of use based on standard switch recordings made within the terminating carrier's network for Section 251(b)(5) traffic, ISP bound traffic, and intraLATA toll traffic. *These terminating recordings are the basis for each party to generate bills to the originating carrier.* (Emphasis added).

10.1.2 Where CLEC is using terminating recordings to bill intercarrier compensation, SBC Missouri will provide the terminating Category 11-01-XX records by means of the Daily Usage File (DUF) to identify traffic that originates from an end user being served by a third party telecommunications carrier using an SBC Missouri non-resale offering whereby SBC Missouri provides the end office switching on a wholesale basis. *Such records will contain the Operating Company Number (OCN) of the responsible LEC-to-LEC network that originated the calls which CLEC may use to bill such originating carrier for MOUS terminated on CLECs network.* (Emphasis added).

From this document and the substantial record now before us, we conclude that SBC has implemented a system-wide process of terminating record-creation for traffic exchanged with competitive local exchange carriers. We also conclude that SBC's system obviously uses an OCN to account for UNE-P traffic, and that such system feeds UNE-P call transactions daily to competitors who use a terminating records creation process. Given the obvious extent to which SBC has already implemented a terminating records creation process in Missouri, we reject SBC's contention of a fiscal impact attributed to our rules.

We are also hesitant to accept the view point of those who contend that our rules will create confusion. Because SBC has already implemented its terminating records creation process, any potential confusion should be directed elsewhere – not to our rules. Given SBC's practice of relying on terminating record-creation for traffic exchanged with competitive carriers, we see no reason not to extend the process to willing participants simply because they are incumbent carriers. We find that doing less might result in disparate treatment of incumbent carriers in Missouri because these carriers are not permitted to avail themselves of the M2A or similar interconnection agreements that SBC makes available to competitive local exchange carriers. We find that permitting incumbent carriers to avail themselves of the same record-creation processes as competitors will lessen the potential for disparate treatment. We will implement this rule without change.



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

STEVE GAW

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

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WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

May 6, 2005

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

Dear Secretary Carnahan:

Re: **4 CSR 240-29.080 Use of Terminating Record Creation for LEC-to-LEC
Telecommunications Traffic**

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 Department of Economic Development, Public Service Commission on this 6th day of May, 2005.

Statutory Authority: Sections 386.040 and 386.250 RSMo 2000

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

Keith R. Krueger, Deputy General Counsel
Missouri Public Service Commission
200 Madison Street
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Jefferson City, Missouri 65102
(573) 751-4140
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BY THE COMMISSION


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

Robin Carnahan
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

Administrative Rules Stamp

COPY

RECEIVED

MAY 06 2005

SECRETARY OF STATE
ADMINISTRATIVE RULES

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

A. Rule Number 4 CSR 240-29.090

Diskette File Name Final Rule 29.090

Name of person to call with questions about this rule:

Content Keith R. Krueger Phone 573/751-7510 FAX 573/751-9285

E-mail address keith.krueger@psc.mo.gov

Data entry Carla Schnieders Phone 573-522-9038 FAX 573-526-6969

E-mail address carla.schnieders@psc.mo.gov

Interagency mailing address GOB, 200 Madison Street, 8th Floor, J.C. MO 65102

Statutory Authority Sections 386.040 and 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. CHECKLIST guide for rule packets:

- | | |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Forms, number of pages _____ |
| <input checked="" type="checkbox"/> Cover letter | <input type="checkbox"/> Authority section with history of the rule |
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Public cost statement |
| <input type="checkbox"/> Small business impact statement | <input type="checkbox"/> Private cost statement |
| <input type="checkbox"/> Fiscal notes | <input type="checkbox"/> Hearing date _____ |

C. RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking (choose one) ☐ rule, ☐ amendment, ☐ rescission, or ☐ termination

MUST include effective date _____

☐ Proposed Rulemaking (choose one) ☐ rule, ☐ amendment, or ☐ rescission

☒ Order of Rulemaking (choose one) ☒ rule, ☐ amendment, ☐ rescission, or ☐ termination

MUST complete page 2 of this transmittal

☐ Withdrawal (choose one) ☐ rule, ☐ amendment, ☐ rescission or ☐ emergency

☐ Rule action notice ☐ In addition ☐ Rule under consideration

D. SPECIFIC INSTRUCTIONS: Any additional information you may wish to provide to our staff _____

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-29.090

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. Give an explanation of each section, subsection, etc. which has been changed since the proposed rulemaking was published in the Register.

In Paragraph (2), the words "of all amounts not disputed in good faith" have been inserted after the words "shall submit payment." Also, "thirty (30) days" has been changed to "thirty-one (31) days."

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.

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 29 – Enhanced Record Exchange Rules

REC-111

MAY 06 2005

SECRETARY OF STATE
ADMINISTRATIVE RULES

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

**4 CSR 240-29.090 Time Frame for the Exchange of Records, Invoices and
Payments for LEC-to-LEC Network Traffic is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). Those sections of the proposed rule with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

COMMENT: The Small Telephone Company Group (STCG) expresses support for this rule as requiring the timely provision of records and payments to terminating carriers. According to the STCG, these provisions are appropriate and consistent with common business practices.

COMMENT: The Telecommunications Department Staff (Staff) recommends this rule be implemented without change.

RESPONSE: We will implement this rule after making a change as discussed in our comments related to Section 2.

4 CSR 240-29.090(2)

COMMENT: Sprint suggests eliminating this section as it is inconsistent with Sprint's PSC Mo. No. 26 Tariff.

COMMENT: SBC states this section is unnecessary, as the payment time frame for exchange access service invoices is stated in individual access tariffs. SBC suggests that in the event the Commission goes forth with this section, this paragraph be amended to read: "The originating carrier shall submit payment of all amounts not disputed in good faith within thirty (30) days.

RESPONSE AND EXPLANATION OF CHANGE: Not all compensation occurring on the LEC-to-LEC network is subject to access tariffs. We find no material difference in the thirty (30) days referenced in this section and the thirty-one (31) days referenced in Sprint's tariff. Nevertheless, we will change our rule to reflect that payments are due in thirty-one (31) days and not the original thirty (30) days. We also acknowledge SBC's concern and will incorporate its suggestion to recognize the possibility of disputed amounts.

4 CSR 240-29.090(3)

COMMENT: The Staff supports this section and states a 12-month record retention period is consistent with other industry standards, and offers SBC's PSC Mo. No. 36 as an example.

COMMENT: SBC objects to a 12-month record retention period for billing records it creates. SBC states that the carrier creating the records should keep such records only so long as may be needed to retransmit the data if needed, and that carriers using the records to submit invoices should keep the records only for so long as that carrier deems necessary. SBC recommends reducing from 12-months to 90 days the retention period for recording companies.

RESPONSE: We will order this section implemented as written. We find instructive the 12-month retention period outlined in SBC's access tariff. We can find no reason to implement industry standards for the LEC-to-LEC network which are not consistent with what SBC and the industry recognize as acceptable in the interexchange network.

4 CSR 240-29.090(4)

COMMENT: The STCG recommends addition of a new section to this rule to address residual billing. According to the STCG, addition of its suggested language will address the problem whereby terminating carriers assume 100 percent of the risk for unidentified and uncompensated traffic. According to the STCG, a residual billing mechanism would also provide terminating carriers an appropriate procedure for relief in the event that unidentified and uncompensated traffic continues to flow over the LEC-to-LEC network. The STCG states that other state commissions have imposed similar residual billing obligations on large Bell Operating Companies, and offers the state of Michigan by way of example. The STCG's proposed language would first permit recording of total telecommunications traffic at an end office. The total minutes would then be compared to the sum of all recorded minutes as shown on Category 11-01-XX billing records received from transiting carriers. If the total minutes received exceeded the recorded minutes, the STCG's proposal would permit it to invoice the transiting carrier for the difference. The transiting carriers would then have 60 days to produce Category 11-01-XX billing records or pay the terminating carriers for the "unidentified" traffic.

RESPONSE: We are unwilling to accept the STCG's suggestion to implement the residual billing mechanism suggested. We have previously declined to implement residual billing for the reasons stated in our Report and Order in Case No. TO-99-254, and we again decline for those same reasons. We will not permit measurement of total telecommunications traffic at a terminating end office to be used against total compensable minutes recorded in a tandem office because total telecommunications traffic recorded at an end office contains minutes of noncompensable traffic. It is improper to compare compensable calls recorded at a tandem switch to total minutes recorded at a terminating office that may include local calls, Metropolitan Calling Area

(MCA) calls, incomplete calls, abandoned calls, calls to busy signals, calls to recorded announcements and other manner of noncompensable traffic. We note the STCG's comment defined this difference as "unidentified traffic." We caution carriers that the term "unidentified traffic" is defined in 240-29.100(3) as the difference between *compensable* minutes for which a call record is received and *compensable* minutes recorded at a terminating office. Our rules intentionally do not count non-compensable minutes of use as "unidentified."

In order for the STCG to count traffic as "unidentified," it must first determine the minutes of compensable records received and compare them to the compensable minutes terminated. Pursuant to 4 CSR 240-29.100 (3), if the terminating carrier notes discrepancies between the two, it is encouraged to report the discrepancy to the relevant upstream tandem providers. In reporting instances of unidentified traffic, terminating carriers are required, again, pursuant to our rules, to provide the "ANI [Automatic Number Identification] and such other information relating to such unidentified traffic as is in its possession." We expect such other information to include, at minimum, the called number, time and date stamp, and trunk group information. Such information must be provided to upstream carriers on a per-call basis. Terminating carriers may not simply count up minutes on a random basis without consideration to such basic information as to whether or not the calls are even compensable. The STCG's proposal would place the burden on tandem carriers to prove calls were delivered to, for example, a busy signal. It is simply unnecessary as well as improper and inefficient to place such burdens on tandem providers. Our rules empower the small terminating carriers with the tools they need to monitor and better manage developments on their own network. Having provided such tools to them, we will not now permit the small carriers to simply sit back and mistakenly count calls to busy signals as unidentified traffic, thus forcing tandem carriers to disprove the allegation. We will implement our rules without the residual billing suggestion from the STCG.

4 CSR 240-29.090 Time Frame for the Exchange of Records, Invoices, and Payments for LEC-to-LEC Network Traffic

(2) Upon receiving a correct invoice requesting payment for terminating traffic placed on the LEC-to-LEC network, the originating carrier shall submit payment of all amounts not disputed in good faith within thirty-one (31) days to the telecommunications company that submitted the invoice.



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

STEVE GAW

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WESS A. HENDERSON
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DANA K. JOYCE
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May 6, 2005

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

Dear Secretary Carnahan:

Re: **4 CSR 240-29.090 Time Frame for the Exchange of Records, Invoices and Payments
for LEC-to-LEC Network Traffic**

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 Department of Economic Development, Public Service Commission on this 6th day of May, 2005.

Statutory Authority: Sections 386.040 and 386.250 RSMo 2000

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

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BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Dale Hardy Roberts", is written over the text "BY THE COMMISSION".

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