

RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-36.050

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.)

Section (1) is revised to explicitly state that the commission may vary from the default seven (7) days filing an agreement that conforms to the commission's arbitration decision.

Section (2) is revised to correct the reference to the section of this rule where references to standards of review are formed and to reflect that those standards of review are referenced in that section, not set forth there.

Section (3) is revised to add that if the commission does not act to approve or reject an arbitrated agreement within thirty (30) days of when it is filed with the commission, the agreement is deemed approved.

Section (6) is revised to state that relief from commission decisions on arbitrated agreements is to be sought from a federal district court.

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

JEFF DAVIS

LINWARD "LIN" APPLING

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

ROBERT J. QUINN, JR.
Executive Director

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

June 10, 2004

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

Dear Secretary Blunt,

Re: Final Order of Rulemaking 4 CSR 240-36.050

CERTIFICATION OF ADMINISTRATIVE RULE

I hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission for filing on this 10th day of June 2004.

Statutory Authority: Section 386.410

If there are any questions, please contact:

Nathan Williams
Senior Counsel
P.O. Box 360
Jefferson City, MO 65102
(573) 751-8702, FAX (573) 751-9285
nathan.williams@psc.mo.gov

BY THE COMMISSION

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

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 36—Alternative Dispute Resolution Procedural
Rules Governing Filings Made Pursuant to the
Telecommunications Act of 1996**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.410 RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-36.050 Commission Approval of Agreements Reached by Arbitration is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 2, 2004 (29 MoReg 202). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this and associated proposed rules was held March 12, 2004, and the public comment period ended March 5, 2004. At the public hearing, Nathan Williams, Senior Counsel in General Counsel's Office of the Public Service Commission of Missouri, Natelle Dietrich, Regulatory Economist III of the Public Service Commission of Missouri provided oral responses to written comments. In addition, orally at the public hearing, Mike Dandino provided comments for the Office of the Public Counsel; Mimi McDonald, Senior Counsel for Southwestern Bell Telephone, LP, provided comments for Southwestern Bell Telephone, LP; Carl Lumley of Curtis, Oetting, Heinz, Garrett & O'Keefe, P.C., provided comments for MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc.; Larry Dority of Fisher and Dority, P.C., provided comments for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; and Lisa Chase of Andereck, Evans, Milne, Peace and Johnson, LLP, provided comments for Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company.

The staff of the Public Service Commission of Missouri, Southwestern Bell Telephone, L.P., Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company, MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. and Sprint filed written comments.

COMMENT: The staff of the Public Service Commission suggests that because of the use of commission resources in conducting arbitrations, the parties to them should not be able to agree to a different result than that reached by the commission after the commission makes its decision.

MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC, AT&T of the Southwest, Inc. and Southwestern Bell Telephone, LLP disagree with the commission's staff and suggest that the parties should always be free to negotiate an agreement.

RESPONSE: A goal of the Telecommunications Act of 1996 is for parties to voluntarily enter into agreements. No changes have been made to the rule as a result of this comment.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc., suggest that section (1) should be changed to state that the commission will establish the date for the filing of the agreement when it makes its arbitration decision rather than establishing a timeframe of seven (7) days. Sprint proposes the timeframe be extended from seven (7) days to ten (10) days.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that it should be explicitly clear that the commission can vary from the seven (7) days established in the rule. Section (1) of the rule will be changed.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. point out that the reference in section (2) to section 36.050(3) should instead be to section 36.050(4), the section that references standards for review. Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company argue that the timeframe in this section as well as the thirty (30) days for commission action in section (3) is inadequate to frame and decide issues regarding traffic that is the subject of the agreement that is destined to a carrier that is not a party to the agreement. MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. assert that those not parties to a negotiation should raise their concerns when the agreement is being presented to the commission for approval. CenturyTel of Missouri, LLC and Spectra Communications Group, LLC oppose that such issues be raised during the arbitration process, *i.e.*, before the arbitrated agreement is presented to the commission for approval.

RESPONSE AND EXPLANATION OF CHANGE: The reference in section (2) to section 36.050(3) will be corrected to refer to section 36.050(4). Additionally, since section 36.050(4) references the standards rather than providing them, the word "provided" in the last clause of the first sentence of section (2) will be revised to "referenced."

COMMENT: Sprint, Southwestern Bell Telephone, LLP raise a concern regarding the approval of an arbitrated agreement in the absence of commission action within thirty (30) days of the filing of the arbitrated agreement.

RESPONSE AND EXPLANATION OF CHANGE: Section 252(e)(4) of the Telecommunications Act of 1996 provides that an arbitrated agreement is deemed approved if the commission does not act upon the submitted agreement within thirty (30) days of the submission. Section (3) will be revised to reflect that, in the absence of commission action within thirty (30) days of submission, the agreement is deemed approved.

COMMENT: Sprint argues that meeting quality of service standards should be outside the scope of an interconnection agreement and proposes deletion of the last three clauses of the last sentence of section (4).

RESPONSE: Section 252(e)(3) of the Telecommunications Act of 1996 specifically reserves to state commissions the right to establish and enforce other requirements of state law that do not conflict with those of the federal act and rules including “compliance with intrastate telecommunications service quality standards or requirements.” No changes have been made to the rule as a result of this comment.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. questions both the title and content of section (6) asserting the section should be rewritten to conform to section 252(e)(6) of the Telecommunications Act of 1996.

RESPONSE AND EXPLANATION FOR CHANGE: The section will be revised to conform to the requirement of section 252(e)(6) of the Telecommunications Act of 1996 that review of state commission action will be by a federal district court.

4 CSR 240-36.050 Commission Approval of Agreements Reached by Arbitration

(1) Filing of Conformed Agreement—Unless the commission orders otherwise, within seven (7) days of the filing of a commission order approving, rejecting or modifying the arbitrator’s final report, the parties shall file with the commission the entire agreement that was the subject of the negotiation. The agreement shall conform in all respects to the commission’s order. Concurrently with the filing of the conformed agreement, the parties shall each file statements that indicate whether the agreement complies with the requirements of sections 251 and 252 of the Act, Missouri statutes, and the commission’s rules.

(2) Within ten (10) days of the filing of the agreement, anyone may file comments concerning the agreement; however, such comments shall be limited to the standards for review referenced in section 36.050(4) of this chapter. The commission, upon its own motion, may hold additional informal hearings and may hear oral argument from the parties to the arbitration.

(3) Commission Review of Arbitrated Agreement—Within thirty (30) days following the filing of the arbitrated agreement, the commission shall issue a decision approving or rejecting the arbitrated agreement (including those parts arrived at through negotiations) pursuant to subsection 252(e) of the Act and all its subparts. In the event the commission fails to act on the arbitrated agreement within thirty (30) days of when the agreement is filed, the agreement shall be deemed approved.

(6) Review of Commission Decision—Any party aggrieved by a commission decision made under this rule may seek relief in an appropriate federal district court pursuant to section 252(e)(6) of the Act.

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

THROUGH: Dan Joyce

FROM: Nathan Williams


DATE: June 8, 2004

SUBJECT: APPROVAL OF FINAL RULE 4 CSR 240-36.050 AND
AUTHORIZATION TO FILE ORDER ADOPTING FINAL RULE
4 CSR 240-36.050 WITH THE OFFICE OF THE SECRETARY OF
STATE

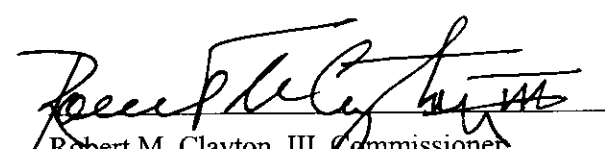
The undersigned Commissioners hereby adopt final rule 4 CSR 240-36.050 and authorize the General Counsel's Office of the Missouri Public Service Commission to file the final rule packet for CSR 240-36.050 with the Office of the Secretary of State.



Steve Gaw, Chair



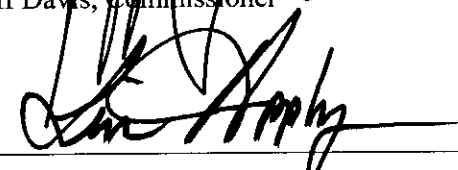
Connie Murray, Commissioner



Robert M. Clayton, III, Commissioner



Jeff Davis, Commissioner



Linward "Lin" Appling, Commissioner