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MISSOURI
PUBLIC SERVICE COMMISSION

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TX-97-379

REBECCA MCDOWELL COOK

Secretary of State

Administrative Rules Division

RULE TRANSMITTAL

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

A. Rule Number 4 CSR 240-33.045
Diskette File Name PAYDEFER.WDR

Name of person to call with questions about this rule:

Content Amy E. Randles Phone (573) 751-8518 FAX (573) 526-7341

Data Entry Amy E. Randles Phone (573) 751-8518 FAX (573) 526-7341

Interagency Mailing Address Room 530, Harry S. Truman State Office Building

Statutory Provision for Rulemaking

Authority §§392.205, 392.220.1, 392.450.2, 392.451.2, and 386.250(6)

Provide Most Current RSMo Year 1996

Date Filed With the Joint Committee on Administrative Rules Not applicable (Exempt pursuant to Section 536.037.3, RSMo (Cum. Supp. 1996))

B. CHECK, IF INCLUDED: FORMS, List by Mo-Form Number, # of Pages
☒ Cover Letter _____
_____ Affidavit _____
_____ Cost Statements _____
_____ Public Entity Fiscal Note OTHER Public Service Commission
_____ Private Entity Fiscal Note authorization memorandum

C. RULEMAKING ACTION TO BE TAKEN

_____ Emergency Rulemaking, Must Specify Effective Date _____
_____ Proposed Rulemaking (New Rule or Amendment or Rescission of Existing Rule)
_____ Order of Rulemaking (MUST complete page 2 of this transmittal)
☒ Withdrawal (Rule, Amendment, Rescission or Emergency)
_____ Rule Action Notice
_____ In Addition

D. SPECIFIC INSTRUCTIONS: In this space indicate any special instructions (e.g., specify publication date preference, identify material incorporated by reference, etc.)

RULE TRANSMITTAL (PAGE 2)

ORDER OF RULEMAKING: Rule Number 4 CSR 240-33.045

1a. Effective Date for the Order **N/A (rule withdrawn September 11, 1997)**
Statutory 30 days _____ or later specific date _____

1b. Does the Order of Rulemaking contain changes to the rule text? **N/A (rule withdrawn)**
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, subparagraph, part, etc., where each change is found.

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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SEP 11 1997

MISSOURI
PUBLIC SERVICE COMMISSION



Commissioners

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Chair

HAROLD CRUMPTON

CONNIE MURRAY

M. DIANNE DRAINER
Vice Chair

Missouri Public Service Commission

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Director, Advisory & Public Affairs
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Director, Utility Services
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Director, Administration
DALE HARDY ROBERTS
Chief Administrative Law Judge
DANA K. JOYCE
General Counsel

September 11, 1997

Honorable Rebecca McDowell Cook
Secretary of State
600 West Main Street
Jefferson City, Missouri 65101

Attention: Administrative Rules Division

I 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 on this 11th day of September, 1997.

Rule: 4 CSR 240-33.045

Statutory authority: Section 392.205, 392.220.1, 392.450.1 and 392.451.2, RSMo (Cum. Supp. 1996) and Section 386.250(6), RSMo (1994)

Missouri Public Service Commission Docket No.: TX-97-379

If there are any questions, please contact:

Amy E. Randles
Administrative Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102
(573) 751-8518.

Honorable Rebecca McDowell Cook
Page 2
September 11, 1997

BY THE COMMISSION

A handwritten signature in cursive script, appearing to read "Cecil I. Wright".

Cecil I. Wright
Executive Secretary

AER

Enclosures:

Order of Rulemaking: 4 CSR 240-33.045 -- Payment Deferral for Schools and Libraries that
Receive Federal Universal Service Fund Support
Rule Transmittal form
Memorandum of Public Service Commission

Title 4 - DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 - Public Service Commission
Chapter 33 - Service and Billing Practices for Telephone Utilities

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 392.205, 392.220.1, 392.450.2, and 392.451.2, RSMo (Cum. Supp. 1996), and under section 386.250(6), RSMo (1994), the Public Service Commission hereby withdraws a proposed rule as follows:

4 CSR 240-33.045 Payment Deferral for Schools and Libraries that Receive federal Universal Service Fund Support is **withdrawn.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 1, 1997 (22 MoReg 785). This proposed rule is withdrawn.

SUMMARY OF COMMENT: The Public Service Commission ("Commission") received five sets of timely comments from six entities, and four sets of timely reply comments from four entities on this proposed rule. The initial comments were filed by the following entities: TDS Telecom ("TDS"); GTE Midwest Incorporated ("GTE"); Southwestern Bell Telephone Company ("SWBT"); Missouri State Library ("State Library"); and Missouri Library Network Corp. together with Missouri Public Library Directors (collectively referred to as "Missouri Libraries"). The reply comments were filed by the following entities: GTE; State Library; ALLTEL Missouri, Inc. ("ALLTEL"); and the Public Service Commission Staff (Staff).

COMMENT: TDS Telecom suggested in its initial comments that the Commission consider other alternatives than this rulemaking. TDS claimed that the rulemaking is burdensome because of the anticipated costs and difficulties in implementation and administration. By way of example, TDS stated that discount levels may vary from year to year and may vary between individual schools and libraries, since federal funding will be based on need and availability. TDS stated that companies would be required to program annual billing modifications with multiple billing codes, and would need to monitor discount approvals, the varying discount levels between individual schools and libraries and annual changes thereto, and differences in available funds from state and federal sources.

By contrast, Missouri Libraries stated in their initial comments that the proposed rule correctly allocates the administrative burdens and will allow libraries to dedicate more of their time and effort to delivering services.

The State Library disagreed with TDS that the rule is burdensome to companies, as it follows the order of the FCC.

In its reply comments, GTE agreed with TDS' claims that necessary changes to billing systems will likely be costly and burdensome on service providers. GTE also pointed out that the Federal Communications Commission's (FCC) rules regarding consortia place a substantial administrative burden on service providers' record keeping and billing systems, because the FCC rules allow schools and libraries to form consortia with other schools and libraries, as well as with health care providers, certain public sector entities including universities and municipalities, and state telecommunications networks. GTE contended that requiring service providers to keep records of the rates charged and the discounts allowed on all the different services used by each of the eligible entities that are part of

a consortia would place a huge burden on the record keeping and billing systems of service providers.

ALLTEL filed reply comments indicating that it concurred in TDS' assessment that the changes to billing requirements that would be necessitated by this proposed rule would be very burdensome to providing companies. ALLTEL further stated that compliance with certain sections of the rule might not be possible due to limitations of LEC end user billing systems. ALLTEL stated that if companies can only hold a school or library responsible for that portion of its bill not supported through the federal Universal Service Fund ("USF"), then discounts would have to be built into the end user billing system that would be costly due to differing codes for varying support levels among schools and libraries, changing support levels from year to year, and changes in eligibility for support. ALLTEL maintained that where mechanized modifications could not be implemented, costly manual procedures would need to be established. ALLTEL advocated a rule that would give local exchange carriers flexibility in the billing details provided to schools and libraries receiving federal USF support, suggesting that billing details could be worked out through cooperation with eligible schools and libraries.

Staff's reply comments addressed this issue by pointing out that the differing levels of funding for schools and libraries is a result of the FCC Order, not the commission's rulemaking. Staff also stated that payment deferral is appropriate since the service provider is to be compensated by the federal USF.

RESPONSE: The Commission has determined that this proposed rule should be withdrawn and that the substance of this proposed rule should be incorporated into the set of proposed amendments to 4 CSR 240-33 that will be drafted by the Staff for filing with the Secretary of State in the near future.

COMMENT: GTE noted that Congress intended a degree of accountability on the part of schools and libraries by requiring them to assess their needs and select a winning bidder. Thus, GTE suggested the proposed rule be modified to clarify that a company's obligations to extend payment deferrals do not begin until service is being provided to the requesting school or library. In addition, GTE noted that the rule provides no incentive for cooperation on the part of the schools and libraries.

The State Library claimed that because federal USF funds will be distributed on a first-come, first-serve basis, it will work a serious hardship on libraries to require that they have *received* approval for USF funds in order to be eligible for payment deferrals. As an alternative the State Library suggested that libraries instead be required to provide companies with copies of their application packets showing that they have applied to be eligible, along with a statement under penalty of perjury that the libraries believe they are eligible for a particular level of support. The State Library disagreed with GTE that payment deferrals not be initiated until selected providers are providing service, since the nature of the billing process means services are billed after delivery.

GTE replied that the hardship alluded to by the State Library because of the federal USF's first-come, first-served requirement is not unique to the State Library, but is a problem for all schools and libraries in all states. GTE believes companies should be able to collect interest for the time between billing and reimbursements for amounts not covered by the federal USF.

The Staff filed reply comments in which it disagreed with the State Library that application packets be used to begin the deferral process; deferral should occur only when the FCC has approved the funding support.

RESPONSE: The Commission has determined that this proposed rule should be withdrawn and that the substance of this proposed rule should be incorporated into the set of proposed amendments to 4 CSR 240-33 that will be drafted by the Staff for filing with the Secretary of State in the near future.

COMMENT: GTE wanted a clarification that schools and libraries are still responsible for the discount amounts if the federal USF fund becomes depleted, since to do otherwise would be an unfunded mandate.

Like GTE, SWBT stated that schools and libraries should remain liable in the event the federal USF fund does not reimburse or credit a company for amounts owed by the school or library.

The State Library disagreed with GTE and SWBT that schools and libraries should remain liable for payment if no reimbursement or credit is received from the federal USF, since the technology plans require schools and libraries to have budgeted funds for the goods and services received, it is anticipated that the federal USF be administered so there are no unfunded support amounts, monitoring of the fund over time will ensure companies are adequately compensated for support, and the Commission can require the state USF to reimburse the companies.

Staff agreed with GTE and SWBT that schools and libraries are responsible for unfunded discount amounts.

RESPONSE: The Commission has determined that this proposed rule should be withdrawn and that the substance of this proposed rule should be incorporated into the set of proposed amendments to 4 CSR 240-33 that will be drafted by the Staff for filing with the Secretary of State in the near future.

COMMENT: GTE stated that the language in (1)(E) of the proposed rule is ambiguous and cites the Joint Board's Recommendation rather than the FCC's order.

The State Library believes that (1)(E) delegates to companies a duty which belongs to the regulatory bodies of the states, which may jeopardize Missouri's participation in the program.

SWBT indicated that the Commission needs to take additional action to enable schools and libraries to receive reimbursement from the federal USF, such as establishing intrastate discounts at levels equal to interstate levels, establishing a mechanism for certifying technology plans for requesting institutions, and determining whether existing tariffs which currently offer discounts to Missouri schools should be eliminated as part of the process to establish discount levels for intrastate services.

GTE agreed with the State Library and SWBT that if (1)(E) is intended to match intrastate discounts with interstate discounts, it "fails miserably." GTE believes that the Commission needs to take specific action to adopt the FCC discount matrix. GTE also agrees with SWBT that the Commission should examine whether existing tariffs providing discounts should be eliminated.

The Staff noted that both GTE and SWBT have commented that the Commission needs to take additional action in a separate proceeding to establish discount levels for intrastate services. Staff instead proposed that the Commission adopt the FCC's discount matrix in this rulemaking. Staff added that state funding for these discounts is not necessary as long as the FCC discount levels are adopted.

RESPONSE: The Commission has determined that this proposed rule should be withdrawn and that the substance of this proposed rule should be incorporated into the set of proposed amendments to 4 CSR 240-33 that will be drafted by the Staff for filing with the Secretary of State in the near future.

COMMENT: GTE also wanted companies to have discretion regarding the filing of new tariffs, since discounts could be applied to existing tariff rates.

Like GTE, SWBT stated that companies should not be required to amend their Missouri tariffs, since the FCC imposes no such requirement.

ALLTEL agreed with GTE that the filing of new tariffs be left to the discretion of companies, since discounts could be applied to existing rates.

In its reply comments, Staff stated that new tariffs reflecting the discounted rates need not be filed, since the discount will be applied to existing tariff rates.

RESPONSE: The Commission has determined that this proposed rule should be withdrawn and that the substance of this proposed rule should be incorporated into the set of proposed amendments to 4 CSR 240-33 that will be drafted by the Staff for filing with the Secretary of State in the near future.

COMMENT: SWBT commented that the proposed rule should be revised to clarify that it covers "telecommunications services."

GTE also agreed with SWBT that it would be inappropriate for the Commission to require payment deferrals for interstate services.

Missouri Libraries disagreed with SWBT that the rule should be limited to telecommunications companies, and noted that the FCC Order encourages nontelecommunications carriers to form partnerships or joint ventures with telecommunications carriers.

RESPONSE: The Commission has determined that this proposed rule should be withdrawn and that the substance of this proposed rule should be incorporated into the set of proposed amendments to 4 CSR 240-33 that will be drafted by the Staff for filing with the Secretary of State in the near future.

MEMORANDUM

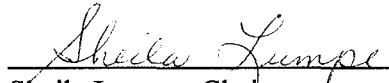
TO: Cecil I. Wright, Executive Secretary

DATE: September 11, 1997

RE: Authorization to File Order of Rulemaking with the Office of the Secretary of State

CASE NO: TX-97-379

The undersigned Commissioners hereby authorize the Executive Secretary of the Missouri Public Service Commission to file the following Order of Rulemaking with the Office of the Secretary of State, to wit: 4 CSR 240-33.045 - Payment Deferral for Schools and Libraries that Receive Federal Universal Service Fund Support. A copy of the documents to be filed with the Secretary of State, including a copy of said USF Order of Rulemaking, is attached as Exhibit A to this memorandum.



Sheila Lumpe, Chair



M. Dianne Drainer, Vice Chair



Harold Crumpton, Commissioner



Connie Murray, Commissioner