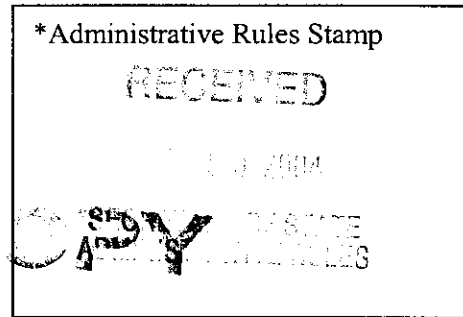


MATT BLUNT
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL



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

A. Rule Number 4 CSR 240-36.030
Diskette File Name Final Rule 240-36.030
Name of Person to call with questions about this rule:
Content Nathan Williams Phone 573-751-8702 FAX 573-751-9285
Data Entry Tammy Vieth Phone 573-751-8377 FAX 573-751-9285
Email Address nathan.williams@psc.mo.gov
Interagency Mailing Address Governor Office Building, 200 Madison St., 8th Floor, Jefferson City, MO
Statutory Authority 386.410 Current RSMo date 2000
Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo 2000, and Executive Order No. 97-97 (June 27, 1997)

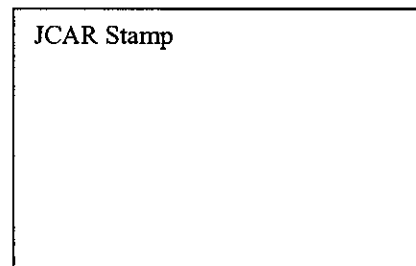
B. CHECK, IF INCLUDED:

- | | |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Incorporation by reference materials, if any |
| <input checked="" type="checkbox"/> Cover letter | <input type="checkbox"/> Authority with history of the rule |
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Public cost |
| <input type="checkbox"/> Forms, number of pages _____ | <input type="checkbox"/> Private cost |
| <input type="checkbox"/> Fiscal notes | <input type="checkbox"/> Hearing and comment period |

C. RULEMAKING ACTION TO BE TAKEN

- Emergency Rulemaking, (check one) rule amendment rescission termination
MUST include effective date _____
- Proposed Rulemaking (check one) rule amendment rescission
- Order of Rulemaking (check one) rule amendment rescission termination
MUST complete page 2 of this transmittal
- Withdrawal (check one) rule amendment rescission emergency
- Rule action notice
- In addition
- Rule under consideration

D. SPECIFIC INSTRUCTIONS: Please indicate any special instructions (e.g., publication date preference, identify material to be incorporated by reference, or forms included herein).



E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-36.030

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.)

A new section (2) is added which sets a timeframe for parties to consent to mediation.

Proposed sections (2) to (18) are renumbered to sections (3) to (19).

Proposed section (2), now section (3), is revised to change the time when a mediator is appointed and to eliminate the option of a commissioner being the mediator.

Proposed section (3), now section (4), is revised to change when parties' statements are due.

Proposed section (4), now section (5), is revised to change when the mediation conference is held and to expressly state that the mediator has discretion in fixing when the initial mediation conference is held.

Proposed section (15), now section (16), is revised to shorten the time from ten (10) to seven (7) days for a party to respond to the mediator's proposed resolution.

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 240-36.030

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:

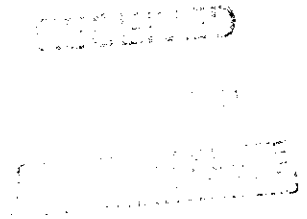
Nathan Williams
Senior Counsel
P.O. Box 360
Jefferson City, MO 65102
(573) 751-8702, FAX (573) 751-9285
nathan.williams@psc.mo.gov

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 240-36.030 Mediation 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 198-99). 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: Those who appeared at the public hearing generally endorsed this proposed rule as part of the group of rules proposed for chapter 36 and the staff of the Public Service Commission

of Missouri endorsed this rule in its written comments; however, particular issues were raised with respect to certain sections of this rule, as stated in the comments that follow.

RESPONSE: No changes have been made to the rule as a result of these general endorsements.

COMMENT: The staff of the Public Service Commission suggests modification of section (1) to add the word “rates” to the list of matters that may be the subject of mediation under the rule.

RESPONSE: As the commission’s staff clarified in response to a query from the presiding officer during the public hearing, section (1) of the proposed rule tracks the language of section 252(a) of the Telecommunications Act of 1996 which lists “interconnection, services or network elements” and makes reference to section 251 of the Telecommunications Act of 1996. Section 251(c)(2)(D) expressly requires that interconnection be “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory” Specific inclusion of rates in the list of matters that may be the subject of mediation under the rule could be read as a limitation on the items that may be mediated under the rule. No changes have been made to the rule as a result of this comment.

COMMENT: Sprint suggests revising section (2) of the rule to eliminate the possibility under the rule that a commissioner might be the mediator since any commissioner who acted as a mediator might not be able to vote on an agreement presented to the commission after mediation and arbitration and, further, because topics or issues may be discussed or addressed that might have interplay with other commission cases. Southwestern Bell Telephone, LP, in addition to proposing that commissioners not be eligible to serve as mediators, proposed that commission staff also be ineligible to serve as mediators.

RESPONSE AND EXPLANATION OF CHANGE: The commission recognizes that, absent consent of the parties to the agreement, it would be inappropriate for a mediator to vote to accept, reject or modify an agreement reached after arbitration of the same matters that were the subject of the mediation. Further, the commission understands that matters may be disclosed during a mediation that could be relevant to other commission cases. To avoid these issues the commission will revise the rule to eliminate the option of a commissioner being the mediator. The commission staff has the technical expertise needed to conduct successful mediations without the added cost of procuring a mediator, which cost could be an impediment to participation in the process. Use of outside mediators is permissible under the proposed rule. Section (2) of the rule will be changed.

COMMENT: Sprint, 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 modifying section (3) of the rule as to the triggering event for the filing of written summaries with the mediator. Sprint proposes the triggering event be changed to the appointment of the mediator. 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. propose the triggering event be the date of the initial mediation conference addressed in section (4), that the trigger for the date of the initial mediation conference be tied to the date of the request for mediation and that both substantive and procedural issues be addressed at the initial mediation conference. They propose the initial mediation conference occur fifteen (15) days after the filing of the request for

mediation rather than twenty-five (25) days and that the written summaries be filed two (2) days before the initial mediation conference.

RESPONSE AND EXPLANATION OF CHANGE: A party to a negotiation that does not request mediation should advise the commission of its willingness to mediate when another party to the negotiation requests the commission to mediate differences between the negotiating parties. Parties to negotiations do not require twenty-five days from the date a request for mediation is made before they should be prepared to discuss procedure and substantive issues during a mediation conference. A new section (2) will be added to the rule, sections (2), (3) and (4) of the rule will be changed, and sections (2) to (18) will be renumbered to sections (3) to (19).

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 modifying section (10) of the rule to expand it beyond exchange of information in the form of documents or material to include access to information.

RESPONSE AND EXPLANATION OF CHANGE: The rule should be expanded to include participation by the mediator in resolving disputes over access to all forms of information as well as disputes as to the individuals who may have access to information.

COMMENT: The staff of the Public Service Commission suggests that section (11) be revised to state that the mediator may require parties to provide clarification and additional information needed to assist in resolution of the dispute rather than state that the mediator may request clarification and additional information. The staff notes that section (3) states that the mediator may require additional information or material at an earlier stage of the proceeding. Southwestern Bell Telephone, LP suggested that staff's proposed change not be adopted as the party may not have the information the mediator desires.

RESPONSE AND EXPLANATION OF CHANGE: To emphasize the voluntary nature of mediations the language in section (11) should not be revised; however, the authority of the mediator to require supplemental material or information in section (3) should be revised to authorize that such material or information may be requested. Section (3) 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., assert that the parties do not need the ten (10) days to determine whether a final proposed resolution made by the mediator is acceptable found in section (15) and suggest that five (5) days is adequate.

RESPONSE AND EXPLANATION OF CHANGE: The parties to a negotiation should not need ten (10) days to determine whether a final proposed resolution made by the mediator is acceptable; however, given that days here are calendar days, not business days, seven (7) days is an appropriate time period. Section (15) 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., suggest that the reference in section (17)(A) to section

386.480 could be read as allowing the commission to order disclosure of information exchanged during mediation and, if so read, would inhibit candid mediated negotiations.

RESPONSE: As worded section (17)(A) states that “The entire mediation process shall be kept confidential . . .” The suggested interpretation of the reference to the statute in section (17)(A) is, at best, strained. This rule will be promulgated by an order of the commission. Accordingly, the commission exercises its discretion under section 386.480 not to disclose this information. 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 (18) could be modified to state that the agreement must be submitted under another proposed rule, 36.060.

RESPONSE: As indicated in response to comments made as to proposed rule 4 CSR 240-36.060, the Public Service Commission is withdrawing that rule because the commission is considering the substance of proposed rule 4 CSR 240-36.060 in another rulemaking for another chapter. No changes have been made to this rule as a result of this comment.

4 CSR 240-36.030 Mediation

(2) Response to Request for Mediation—Within five (5) days of a request to the commission for mediation, each party to a negotiation that has not requested mediation shall advise the commission of its willingness to mediate the differences between the negotiating parties.

(3) Appointment of Mediator—When all parties to a negotiation agree to mediation, the commission shall appoint a mediator within ten (10) days of the request for mediation. The mediator shall be an employee of the commission unless the parties consent to the appointment of an outside mediator. The costs of an outside mediator shall be borne equally by the parties. The mediator shall be disqualified from participating as an arbitrator or presiding officer in subsequent proceedings regarding the same negotiation. Presiding officer is defined in 4 CSR 240-2.120.

(4) Parties' Statements—Within thirteen (13) days after the filing of a request for mediation, each party to the negotiation shall submit a written statement to the mediator summarizing the dispute, and shall furnish such other material and information it deems appropriate to familiarize the mediator with the dispute. The mediator may request any party to provide supplemental material or information.

(5) Initial Mediation Conference—Unless the mediator advises the parties otherwise, the mediator shall convene an initial conference within two (2) days after the filing of the parties' statements or the date that they are due, whichever is earlier. At the initial conference, the parties and mediator shall discuss a procedural schedule, and attempt to identify, simplify and limit the issues to be resolved. Each party should be prepared to informally present its position and arguments to the mediator at the initial mediation conference and to engage in mediated negotiations on substantive issues.

(6) Conduct of the Mediation—The mediator, subject to the rules contained herein, shall control

the procedural aspects of the mediation.

(7) Mediations Closed to the Public—To provide for effective mediation, participation in a mediation is strictly limited to the parties involved in the negotiation of the agreement contemplated by sections 251 and 252 of the Act that is the subject of the mediation. All mediation proceedings shall remain closed to the public.

(8) Caucusing—The mediator is free to meet and communicate separately with each party. The mediator shall decide when to hold such separate meetings. The mediator may request that there be no direct communication between the parties or between their representatives regarding the dispute without the concurrence of the mediator.

(9) Joint Meetings—The mediator shall decide when to hold joint meetings with the parties and shall fix the time and place of each meeting and the agenda thereof. Formal rules of evidence shall not apply to these meetings or any portion of the mediation proceeding.

(10) No Stenographic Record—No record, stenographic or otherwise, shall be taken of any portion of the mediation proceeding.

(11) Exchange of Additional Information—If any party has a substantial need for documents or other material in the possession of another party, the parties shall attempt to agree on the exchange of requested documents or other material. Further, if any party has substantial need for other information in the possession of another party, or if any party wishes to disclose to its employees information that it obtained from another party, the parties shall attempt to reach agreement on disclosure of the information and who may see it. Should they fail to agree, either party may request a joint meeting with the mediator who shall assist them in their effort to reach an agreement. The parties may enter into nondisclosure agreements. At the conclusion of the mediation process, upon the request of the party that provided the documents or other material to one or more of the mediating parties the recipients shall return such documents or material to the originating party without retaining copies thereof.

(12) Request for Further Information by the Mediator—The mediator may request any mediating party to provide clarification and additional information necessary to assist in the resolution of the dispute.

(13) Responsibility of the Parties to Negotiate and Participate—Parties are expected to initiate proposals for resolution of the dispute, including proposals for partial resolution. Each party is expected to be able to provide to the mediator that party's justification for the terms of any resolution that it proposes.

(14) Authority of the Mediator—The mediator does not have authority to resolve the dispute, but the mediator shall help the parties attempt to reach a mutually satisfactory resolution. At any time during the mediation, the mediator may recommend to the parties only, oral or written proposals for resolution of the dispute, in whole or in part.

(15) Reliance by Mediator Upon Experts—The mediator may use the services of and rely on experts retained by, or employed by, the commission for purposes of the mediation. Other than subsequent mediations, if any, such experts shall not participate, directly or indirectly, in any subsequent proceedings regarding the same negotiation. The mediator shall disclose to the parties the identities of all experts that provide any services to the mediator for purposes of the mediation.

(16) Impasse and Recommended Resolution of Mediator—In the event that the parties fail to resolve their dispute, the mediator, before terminating the mediation, shall submit to all of the parties a final proposed resolution that addresses all or part of the disputed issues. Each party shall advise the mediator within seven (7) days of the date the mediator issues the proposed resolution as to whether the party accepts the mediator's proposed resolution.

(17) Termination of the Mediation—Any of the following events shall terminate the mediation:

(A) The mediating parties execution of an agreement that resolves all disputed issues;

(B) Written service by a party on the mediator and other parties of a declaration that the mediation proceedings are terminated; or

(C) The mediator's submission to the parties and the commission of a written declaration that further mediation would be futile. Such a declaration shall be conclusory and neutrally worded to avoid any negative inference respecting any party to the mediation.

(18) Confidentiality—

(A) The entire mediation process shall be kept confidential, except for the terms of any final agreements reached during the mediation. The parties, the mediator and any experts used by the mediator, unless all parties agree otherwise, shall not disclose information obtained during the mediation process to anyone that did not participate in the mediation, including, but not limited to, commissioners, commission staff and third parties; provided, however, that the commissioners may be informed in writing, with a copy provided to each party to the mediation, of the identity of the participants and, in the most general manner, the progress of the mediation. Section 386.480, RSMo 2000 is applicable to mediations.

(B) Except as the parties otherwise agree, the mediator, and any experts used by the mediator, shall keep confidential all information contained in any written materials, the materials themselves and any other information submitted to the mediator. All records, reports, or other documents received by the mediator while serving in that capacity shall remain confidential. The mediating parties and their representatives are not entitled to receive or review any such materials or information submitted to the mediator by another party or representative, without the concurrence of the submitting party. At the conclusion of the mediation, the mediator shall return to the submitting party all written materials and other documents which that party provided the mediator.

(C) The mediator shall not divulge records, documents and other information submitted to him or her during the mediation proceeding, nor shall the mediator testify in regard to the mediation, in any subsequent adversarial proceeding or judicial forum. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitration, judicial or other proceeding, any of the following:

1. Views expressed or suggestions made by another party with respect to a possible resolution of the dispute;

2. Statements made by another party in the course of the mediation;
3. Proposals made or views expressed by the mediator; or
4. The fact that another party had or had not indicated willingness to accept a resolution proposed by the mediator.

(19) Post-Agreement Procedure—The parties shall present to the commission for approval any final agreements reached during mediation. Such proposed agreements, on the face of the agreement, shall:

(A) Not discriminate against a telecommunications carrier not a party to the mediated agreement;

(B) Be consistent with the public interest, convenience and necessity; and

(C) Comply with the commission's service quality standards for telecommunications services as well as the requirements of all other rules, regulations, and orders of the commission.

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

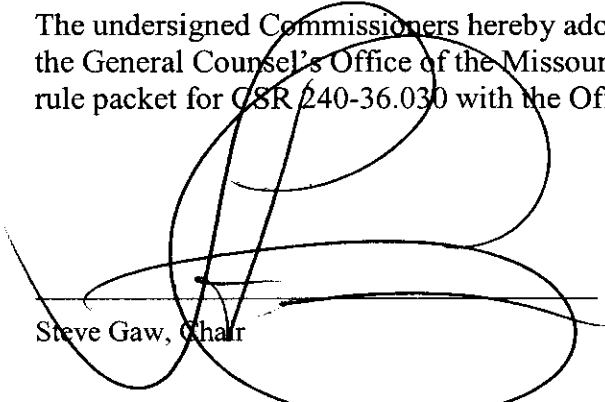
THROUGH: Dan Joyce

FROM: Nathan Williams

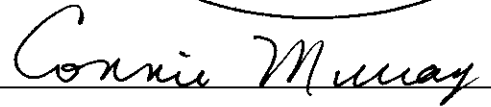
DATE: June 8, 2004

SUBJECT: APPROVAL OF FINAL RULE 4 CSR 240-36.030 AND
AUTHORIZATION TO FILE ORDER ADOPTING FINAL RULE
4 CSR 240-36.030 WITH THE OFFICE OF THE SECRETARY OF
STATE

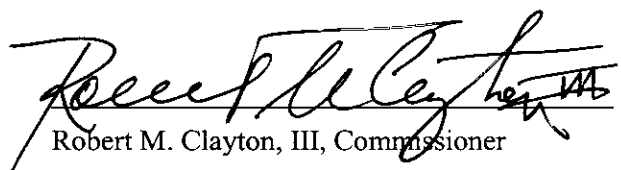
The undersigned Commissioners hereby adopt final rule 4 CSR 240-36.030 and authorize the General Counsel's Office of the Missouri Public Service Commission to file the final rule packet for CSR 240-36.030 with the Office of the Secretary of State.



Steve Gaw, Chair



Connie Murray, Commissioner



Robert M. Clayton, III, Commissioner



Jeff Davis, Commissioner



Linward "Lin" Applng, Commissioner