

Robin Carnahan

**Secretary of State
Administrative Rules Division**

RULE TRANSMITTAL

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August 8, 2013
Data Center
Missouri Public
Service Commission

AUG 07 2013

SECRETARY OF STATE
ADMINISTRATIVE RULES

COPY

Rule Number 4 CSR 240-31.020

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Morris Woodruff Phone 573-751-2849 FAX 573-526-6010

Email address morris.woodruff@psc.mo.gov

Data

Entry Chris Koenigsfeld Phone 573-751-4256 FAX 573-526-6010

Email address christine.koenigsfeld@psc.mo.gov

Interagency mailing address Public Service Commission, 9th Fl, Gov.Ofc Bldg, JC, MO

TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☒ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☐ Order of Rulemaking

Effective Date for the Order

☐ Statutory 30 days OR Specific date

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☐ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Small Business Regulatory
Fairness Board (DED) Stamp

SMALL BUSINESS
REGULATORY FAIRNESS BOARD

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JOINT COMMITTEE ON

AUG 07 2013

ADMINISTRATIVE RULES



Commissioners

ROBERT S. KENNEY
Chairman

TERRY M. JARRETT

STEPHEN M. STOLL

WILLIAM P. KENNEY

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>

JOSHUA HARDEN
General Counsel

MORRIS WOODRUFF
Secretary

WESS A. HENDERSON
Director of Administration
and Regulatory Policy

CHERLYN D. VOSS
Director of Regulatory Review

KEVIN A. THOMPSON
Chief Staff Counsel

August 7, 2013

Jason Kander
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-31.020 Organization and Meetings of the Board

Dear Secretary Kander,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rulemaking lawfully submitted by the Missouri Public Service Commission.

The Public Service Commission has determined and hereby certifies that this proposed rulemaking will not have an economic impact on small businesses. The Public Service Commission further certifies that it has conducted an analysis of whether there has been a taking of real property pursuant to section 536.017, RSMo 2000, that the proposed rulemaking does not constitute a taking of real property under relevant state and federal law, and that the proposed rulemaking conforms to the requirements of 1.310, RSMo Supp. 2012, regarding user fees.

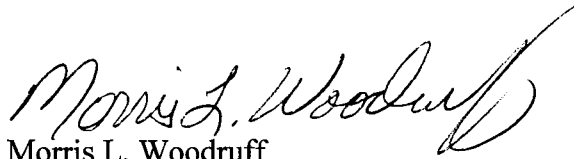
The Public Service Commission has determined and hereby also certifies that this proposed rulemaking complies with the small business requirements of 1.310, RSMo Supp. 2012, in that it does not have an adverse impact on small businesses consisting of fewer than fifty full or part-time employees or it is necessary to protect the life, health, or safety of the public, or that this rulemaking complies with 1.310, RSMo Supp 2012, by exempting any small business consisting of fewer than fifty full or part-time employees from its coverage, by implementing a federal mandate, or by implementing a federal program administered by the state or an act of the general assembly.

Woodruff
August 7, 2013
Certification of Administrative Rule

Statutory Authority: sections 392.200.2 and 392.248 RSMo Supp.1997 and section 392.470.1 RSMo 1994

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

Morris L. Woodruff, Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-2849
morris.woodruff@psc.mo.gov

A handwritten signature in black ink, reading "Morris L. Woodruff". The signature is written in a cursive, flowing style with a large, sweeping flourish at the end.

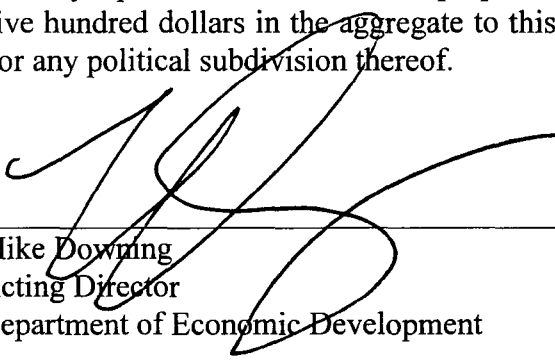
Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures

**AFFIDAVIT
PUBLIC COST**


STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Mike Downing, Acting Director of the Department of Economic Development, first being duly sworn, on my oath, state that it is my opinion that the cost of proposed amendment, 4 CSR 240-31.020, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

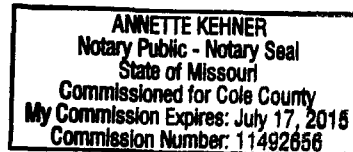


Mike Downing
Acting Director
Department of Economic Development

Subscribed and sworn to before me this 15th day of July, 2013, I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on 17 July 2015.



Notary Public



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Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 31—*[Missouri]* Universal Service *[Fund]*

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SECRETARY OF STATE
ADMINISTRATIVE RULES

PROPOSED AMENDMENT

4 CSR 240-31.020 Organization, Powers and Meetings of the Board The Commission is amending the chapter header, rule title, and sections (1), (2), (3), (4), (6), (7), and (8), adding new sections (1)(D), (1)(E), (1)(F), (6), (8), and (9), and deleting section (5).

PURPOSE: This amendment clarifies and specifies the organization and meetings of the board and other related responsibilities.

(1) *[Within thirty (30) days after the effective date of this rule,]* **Each year during the months of January or February**, the board shall convene *[its initial organizational]* **an annual** meeting, at which time it shall elect a chairperson, a secretary, and such other officers as the board deems appropriate.

(A) The chairperson shall preside over the initial, the regular and any special meetings of the board unless otherwise provided by a majority of the board.

(B) The secretary shall be responsible for recording the minutes of the meetings of the board, which minutes shall be open records in accordance with Chapter 610, RSMo *[Supp. 1997]* **2000**.

(C) Other officers of the board shall have those responsibilities as are delegated to them by the board.

(D) **The board shall designate a member of the staff of the commission or public counsel to serve as the custodian of records. The custodian of records shall serve as such until replaced by the board. The custodian of records shall be responsible for maintaining all records of the board either on paper in the commission's offices or on the MoUSF web site.**

(E) **The board shall designate a member of the staff of the commission or public counsel to serve as the board's general counsel. The general counsel shall consult with and advise the board on legal matters as the board may require.**

(F) **The board may designate one or more members of the staff of the commission and the public counsel to serve as the board's staff, to which it may delegate the day-to-day operations of the board, such as interacting with the MoUSFA, reviewing the work, books and invoices of the MoUSFA and such other work as the board deems appropriate.**

(2) The principal office of the board is located at the offices of the *[Missouri Public C]*commission in Jefferson City, Missouri.

(3) *[The initial, regular, and any special]* **Any** meetings of the board *[shall]* **may** be held in *[the agenda room of the commission unless otherwise]* **any location within the state**

JOINT COMMITTEE ON

AUG 07 2013

ADMINISTRATIVE RULES

of Missouri, as posted on its meeting agenda. All meetings of the board shall be open to the public in accordance with Chapter 610, RSMo *[Supp. 1997]* **2000**. The **meeting agenda, consisting of the time of each meeting and the matters to be discussed,** will be posted at the commission offices and *[will also be available to the public by accessing the commission's home page on the Internet]***on the MoUSF web site at least 24 hours in advance of a board meeting.**

(4) A simply majority of the board, **consisting of a majority of the appointed qualified Public Service Commissioners and an appointed and qualified public counsel,** will constitute a quorum for the transaction of business, the performance of any duty, or the exercise of any power by the board. **Members of the board may appear by telephone, video conference, internet connection or any other technology that allows them to contemporaneously participate in board discussions and votes and that allows the public attending the meeting to hear such discussion and votes.**

[(5) At the initial meeting of the board, or no later than thirty (30) days thereafter, the board will develop, and submit to the commission for its approval, a plan of operation for the Missouri Universal Service Fund (MoUSF) in accordance with section 392.248.8, RSMo Supp. 1997.]

*[(6)]***5) The board shall *[adopt procedures, which will include a]* follow the procedures established by the Office of the Administration in completing a competitive bid process[,] to retain an independent neutral *[Fund Administrator]***MoUSFA**, who will be responsible for the day-to-day operations of the MoUSF. *[These]***The board shall also adopt procedures *[shall]* to provide, among other things, for the periodic review of the *[Fund Administrator]***MoUSFA** and the opportunity *[for selection of an alternative Fund Administrator]* to re-bid the contract for the **MoUSFA** no less frequently than every *[four (4)]***five (5) years.** The board may establish other procedures as needed to facilitate the orderly administration of the MoUSF.****

(6) The board shall follow the procedures established by the Office of the Administration in completing a competitive bid process to retain the services of an accounting firm to audit the MoUSF on an annual basis, to complete the board's state and federal tax filings and perform other accounting duties it may require. The board may choose more than one such firm to perform the duties under the contract, assigning different tasks to each accounting firm. The board shall also adopt procedures to periodically review the work of the accounting firm(s) and to re-bid the contract(s) no less frequently than every five (5) years.

(7) The board shall *[also]* have the power to propose to the commission *[for its adoption such additional]***new or amended rules[, or modifications to existing rules, which in the board's judgement are]****as it deems** necessary and convenient to further implement and administer the MoUSF.

(8) The board will meet at least twice a year; however, except for the annual meeting, there are no constraints on the timing of the board's meetings.

(9) The board may establish a form for ETCs to use to enroll end-users in the Lifeline or Disabled programs and shall post a generic acceptable form on its web site. All ETCs shall use the form established by the board. If a company wants to provide additional information for the applicant, such as that information which is interpreted by the company as required by an FCC compliance order, then a company may be permitted to attach an additional sheet(s) to the form. At least one business day prior to use, the ETC shall electronically submit a copy of such additional sheet(s) to the board staff. If the additional sheet(s) is changed, the ETC shall electronically submit a copy of that additional sheet(s) to the board staff with the changes highlighted, at least one business day prior to the use of the changed form. There is no obligation on the board or its staff to review or approve such sheet(s).

(~~8~~/10) Nothing in these rules shall require the board to take any actions that are inconsistent with **state** or federal statutes, administrative rules, or court decisions concerning the provision of ~~[essential local telecommunications service]~~**voice telephony service**.

AUTHORITY: sections 392.200.2 and 392.248, RSMo Supp. 1997 and 392.470.1, RSMo 1994. Original rule filed Aug. 15, 1997, effective April 30, 1998. Amended: Filed*

**Original authority: 392.200, RSMo 1939, amended 1987, 1988, 1996; 392.248, RSMo 1996; and 392.470.1, RSMo 1987.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five-hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices on or before October 16, 2013, and should include a reference to Commission Case No. TX-2012-0324. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <<http://www.psc.mo.gov/efis.asp>>. A public hearing regarding this proposed rule is scheduled for October 21, 2013 at 10:00 a.m. in the commission's offices in the Governor Office Building, 200 Madison Street, Room 305 Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to

respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Small Business Regulator Fairness Board Small Business Impact Statement

Date: December 12, 2012

Rule Number: 4 CSR 240-31.020

Name of Agency Preparing Statement: Missouri Public Service Commission

Name of Person Preparing Statement: Natelle Dietrich

Phone Number: 573-751-7427

Email: natelle.dietrich@psc.mo.gov

Name of Person Approving Statement: Natelle Dietrich

Please describe the methods your agency considered or used to reduce the impact on small businesses (*examples: consolidation, simplification, differing compliance, differing reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating technique*).

4 CSR 240-31.020(8) – The Commission considered compromise positions and informal comments, but determined it was more appropriate to address concerns in the formal rulemaking process.

Please explain how your agency has involved small businesses in the development of the proposed rule.

The Commission held workshops and solicited informal comments from affected entities, including small businesses.

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.

None

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

Telecommunications companies and wireless providers that seek and receive designation as eligible telecommunications carriers (ETC).

Please list direct and indirect costs (in dollars amounts) associated with compliance.

N/A

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

Telecommunications companies and wireless providers that seek and/or receive ETC designation.

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes ☒ No ☐

If yes, please explain the reason for imposing a more stringent standard.

4 CSR 240-31.020(8) requires ETCs to use a Universal Service Board (USB) established customer application for Lifeline services, which complies with all state and federal rules and regulations. Over a period of about 45 days, the Commission Staff spent around 200 hours reviewing company-specific proposed modifications to the USB-approved form to ensure compliance with state and federal regulations. There are approximately 65 companies designated as ETCs in Missouri.

Federal regulations state that states may have more stringent requirements as long as the state requirements do not conflict with the federal requirements. The FCC indicated the Missouri application and process were satisfactory.

For further guidance in the completion of this statement, please see §536.300, RSMo.