

MEMORANDUM

TO: Colleen M. Dale, Secretary

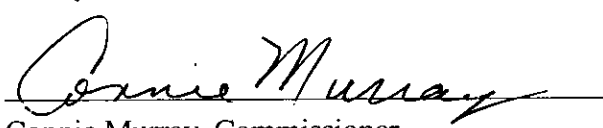
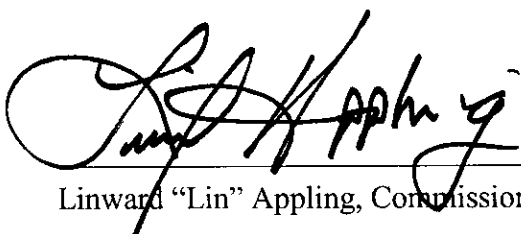
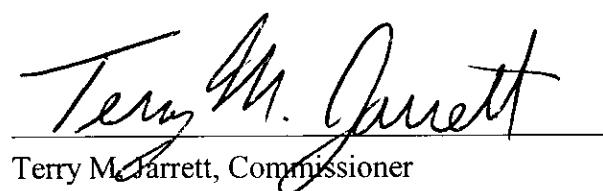
DATE: December 4, 2007

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

CASE NO: TX-2008-0007

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Proposed Rulemaking with the Office of the Secretary of State, to wit:

Amendment to 4 CSR 240-3.570 - Requirements for Carrier Designation as Eligible Telecommunications Carriers


Jeff Davis, Chairman
Connie Murray, Commissioner
Robert M. Clayton III, Commissioner
Linward "Lin" Appling, Commissioner
Terry M. Jarrett, Commissioner

Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-3.570

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

Name of person to call with questions about this rule:

Content Cully Dale Phone 573-751-4255 FAX

Email address cully.dale@psc.mo.gov

Data Entry same Phone FAX

Email address Public Service Commission, Governor Office Bldg, 9th Fl, Jefferson City

Interagency mailing address

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:
(4)(A)2.

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

DEC 7 2007

ADMINISTRATIVE RULES



Commissioners

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Chairman

CONNIE MURRAY

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COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

January 8, 2008

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

Dear Secretary Carnahan:

Re: 4 CSR 240-3.570 Requirements for Carrier Designation as
Eligible Telecommunications Carriers

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 Missouri Public Service Commission for filing on this 8th day of January, 2008.

Statutory Authority: Sections 386.250(6) RSMo 2000

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

Colleen M. Dale, Secretary
Missouri Public Service Commission
200 Madison Street, P.O. Box 360
Jefferson City, MO 65102
(573) 751-4255
cully.dale@psc.mo.gov

BY THE COMMISSION

Colleen M. Dale
Secretary
Missouri Public Service Commission

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 3 – Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250, and 392.200, RSMo Supp. 2004, the commission amends a rule as follows:

4 CSR 240-3.570 is amended.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 2007 (32 MoReg 1910). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held November 1, 2007, and the public comment period ended November 1, 2007. Five (5) written comments were received and one (1) person testified at the hearing. Written comments were received from AT&T Missouri; US Cellular; the Missouri Telecommunications Industry Association ("MTIA"); and the staff of the Missouri Public Service Commission. The person testifying at the hearing was Adam McKinnie on behalf of the staff of the Missouri Public Service Commission. The commenters questioned the necessity to amend the rule at all, and suggested changes to paragraphs (4)(A)1, (4)(A)2, (4)(B)5, (4)(B)(1) and (3), (4)(C)1, (4)(B)5, (4)(C)3, and (4)(B)4 and (4)(C)2.

COMMENT: US Cellular commented that the rule appropriately requires both incumbents and competitors to report ETC investment data. MTIA found the proposed rule is unnecessary in general, as Federal USF issues are in flux and in other rulemakings the Commission is attempting to eliminate certain rules. While Staff is hopeful that federal change is imminent, it asserts that the existing procedure should still be codified.

RESPONSE: The Commission agrees that the existing procedure should be codified. No changes will be made based on these general comments.

COMMENT: MTIA asserted that it is difficult to determine which sections of the rule apply to what sort of carrier. Staff responded that the first three subsections of Section 4 are labeled to state which subsections apply to which type of carrier, and that the rules should only apply to carrier types listed in the headings

RESPONSE: The Commission agrees that the subsection headings in Section 4 are sufficiently clear. No changes will be made based on these general comments.

COMMENT: 4 CSR 240-3.570(4)(A). Staff noted that this section codifies existing ETC certification procedures, and promotes parity, where appropriate, between different types of carriers.

RESPONSE: No changes are necessary as a result of this comment.

JOINT COMMITTEE ON

DEC 7 2007

ADMINISTRATIVE RULES

COMMENT: 4 CSR 240-3.570(4)(A)1. AT&T sought to have it clarified that this portion of the rule only applies to ILECs that actually receive high cost support. AT&T suggests new clarification language.

RESPONSE: The Section heading clearly imposes annual certification filing requirements when (re)certifying ILECs for the federal USF high cost program. If ILECs do not need or request Commission certification, they will not be affected by this rule. No changes are necessary as a result of this comment.

COMMENT: 4 CSR 240-3.570(4)(A)2. US Cellular asserted that the phrase "in non-rural areas of Missouri" should be stricken from this portion of the rule; that the Commission should affirmatively state that it has no ratemaking authority over wireless carriers; and that the Commission may not directly compare wireless ETC rates to the nationwide urban benchmark.

RESPONSE AND EXPLANATION OF CHANGE: 47 C.F.R. 54.316(a) requires state commission's to annually review the comparability of residential rates in rural areas of the state served by non-rural ILECs to urban rates nationwide. The federal regulation does not specify that the rate comparison is only applicable to ILECs, but specifies that the rate comparison will apply to those rural areas served by non-rural ILECs. Such a comparison does not imply the imposition of state ratemaking authority; a statement to that effect is unnecessary. The Commission agrees that the phrase "in non-rural areas of Missouri" should be removed. The proposed amendment will be changed accordingly.

COMMENT: 4 CSR 3.570(4)(B)2. Staff supported the language of this section as it acknowledges the difference between the current funding mechanisms for ILECs (which receive funds based on past expenditures) and CETCs (which receive funds based on future expenditures).

RESPONSE: No changes are necessary as a result of this comment.

COMMENT: 4 CSR 3.570(4)(B)5. US Cellular commented that this portion of the rule should be changed to more closely reflect federal guidelines regarding CETCs and equal access.

RESPONSE: This paragraph was not altered as part of this current amendment, and change does not appear to be necessary at this time. No changes will be made based on this comment.

COMMENT: 4 CSR 3.570(4)(B)(1) and (B)(3). US Cellular commented that it is unfair that CETCs must demonstrate that support was expended only to "improve coverage, service quality, or capacity", whereas ILECs may expend funds on the provision, maintenance and upgrade of facilities.

RESPONSE: These subsections were not altered as part of this current amendment, and the commission remains convinced that the differences in the restrictions on spending are appropriate in light of the differences in the manner of funding. No changes will be made as a result of this comment.

COMMENT: 4 CSR 3.570(4)(C). Staff noted this section will codify existing procedures regarding the ILEC certification process.

RESPONSE: No changes are necessary as a result of this comment.

COMMENT: 4 CSR 3.570(4)(C)1. US Cellular requested that language in this section, specifically regarding meetings among CETCs, Staff and the Public Counsel, be changed to exactly match similar language regarding ILECs.

RESPONSE: This subsection was not altered as part of this current amendment, and the commission is not convinced that the language changes are necessary at this time. No changes will be made as a result of this comment.

COMMENT: 4 CSR 3.570(4)(C)3. MTIA asserted that this paragraph introduces costly new requirements. Staff responded at the hearing that this section merely codifies the current practice and will create no additional cost. Federal regulations require state commissions to certify that federal high cost support is used for the purposes intended by the Telecommunications Act. The current practice, to be codified in this amendment, is to require ILECs to submit documentation that support is used as permitted by federal law.

RESPONSE: No changes will be made to the rulemaking as a result of this comment.

COMMENT: 4 CSR 3.570(4)(B)4 and 4 CSR 3.570(4)(C)2. AT&T asserted that these parts of the rule should be withdrawn, as what constitutes an acceptable expenditure is governed by federal criteria already incorporated elsewhere. MTIA said a standard of this nature is subjective and inconsistent with federal requirements. At the hearing, Staff responded that this portion of the rule promotes fiscal responsibility and is not contrary to federal standards. Staff also filed written comments saying that requiring a statement that costs incurred or estimated budget/investments amounts were no greater than necessary promotes a wise use of scarce public resources while meeting the goals of universal service. Requiring such a statement does not introduce any new costly procedures for companies.

RESPONSE: The requirement to make such a statement that is not contrary to federal guidelines. Since the requirement is only to make a statement, it does not necessitate that ETCs, including ILECs, implement any costly new procedure. No changes will be made to the rulemaking as a result of these comments.

COMMENT: 4 CSR 240-3.570(5). Staff commented that this section of the rule would support better record keeping and eliminate a requirement that was to sunset as of August 15, 2006.

RESPONSE: No changes are necessary as a result of this comment.

**Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting
Requirements**

Proposed Amendment

4 CSR 240-3.570 Requirements for Carrier Designation as Eligible Telecommunications Carriers

PURPOSE: This proposed amendment codifies the incumbent local exchange carrier annual USF certification requirements.

(4) Annual Certification Filing Requirements [for ETCs].

(A) Requirements applicable to all ETCs, including incumbent local exchange carriers (ILECs)

[All ETCs, including incumbent local exchange telecommunications carriers that receive federal high-cost support, shall, b]

- 1. By August 15 of each year, all ETCs, including ILECs, shall** submit an affidavit executed by an officer of the company attesting that federal high-cost support is used consistent with the commission's rules and the Telecommunications Act of 1996. The affidavit will be accompanied by documentation of support received and costs incurred.
- 2. All ETCs, including ILECs, shall, in conjunction with the annual high-cost certification process, assist the commission staff in comparing residential rates in rural areas served by non-rural incumbent local exchange carriers to urban rates nationwide.**
- 3. All reports required to be submitted to the commission shall be attested to by an officer or authorized agent of the ETC or ILEC.**
- 4. The commission or its staff may request additional information regarding the annual certification.**
- 5. Questions regarding the appropriate documentation [for ETCs] should be directed to the commission's Telecommunications Department.**

(B) Requirements applicable to ETCs

- 1. ETCs seeking certification by October 1 of each year shall, no later than June 15 of each year, set up a meeting with the Telecommunications Department staff and the Office of the Public Counsel to review and discuss the ETC's proposal for the two (2)-year improvement plan. The meeting shall include a discussion of the proposed plan and any changes to the plan that would improve coverage, service quality or capacity in unserved or underserved areas in the Missouri service area in which ETC designation was granted.**

[1]A. A two (2)-year improvement plan shall include progress updates on any previously submitted plan. The two (2)-year improvement plan shall include, with specificity, proposed improvements or upgrades to the carrier's network on a wire center-by-wire center basis throughout its proposed designated service area and address all of the separate components addressed in the initial plan, set forth in (2)(A)2. above.

[2/B. Reports on unfilled service requests and customer complaints for the previous year and how the two (2)-year improvement plan may address such requests and complaints.

2. [(C)] ETCs shall submit a demonstration that the receipt of high-cost support *[was]* **will be used** only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted.

[(I)A. For purposes of this section, "support is intended" is defined consistent with the Telecommunications Act which outlines the following principles:

(I)[A]. Quality and rates—quality services should be available at just, reasonable, and affordable rates;

(II)[B]. Access to advanced services—access to advanced telecommunications and information services should be provided in all regions of the state;

(III)[C]. Access in rural and high-cost areas—consumers in all regions of Missouri, including those in rural, insular and high-cost areas will have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

3. [(D)] ETC shall submit a demonstration that high-cost support was used to improve coverage, service quality or capacity in the Missouri service area in which ETC designation was granted and that such support was used in addition to any expenses the ETC would normally incur.

4. **ETCs shall submit a statement that costs incurred and/or estimated budget/investment amounts were no greater than necessary to provide consumers in the ETCs service area access to telecommunications and information services that are reasonably comparable to those services provided in urban areas.**

5. [(E)] ETCs shall submit an affidavit signed by an officer of the company certifying that the ETC continues to comply with the approved consumer code for wireless service recognized by the Cellular Telecommunications and Internet Association (CTIA) and/or applicable service quality standards and consumer protection rules, certifying that the ETC continues to be able to function in emergency situations, continues to offer a local usage plan comparable to that offered by the incumbent local exchange telecommunications carrier in the relevant service areas (if applicable), and continues to acknowledge that it shall provide equal access pursuant to 4 CSR 240-32.100(3) and (4) if all other ETCs in that service area relinquish their designations pursuant to section 214(e)(3) of the Telecommunications Act of 1996.

6. [(F)] ETCs shall submit a report of complaints from consumers in the Missouri service area in which ETC designation was granted that have been submitted to or filed with the Federal Communications Commission in the previous twelve (12) months for which the company has knowledge. Such report shall include, at a minimum: a description of the complaint; the date the complaint was filed; the date the complaint was resolved; the resolution of the complaint and the amount of refund or credit, if any. If the commission finds the ETC's resolution of complaints is not satisfactory or if a particular type of complaint is recurring without being satisfactorily addressed, then the commission may decline to certify the ETC during the annual certification process.

[(G) An application for ETC designation shall be deemed to be acceptance of Missouri Public Service Commission jurisdiction over any issues related to ETC designation and status and USF funding and acceptance of additional rules made applicable to that ETC.

(H) All ETCs, including incumbent local exchange telecommunications carriers, in non-rural areas of Missouri shall, in conjunction with the annual high-cost certification process, assist the commission staff in comparing residential rates in rural areas served by non-rural incumbent local exchange carriers to urban rates nationwide.

(I) All reports required to be submitted to the commission shall be attested to by an officer or authorized agent of the ETC or incumbent local exchange telecommunications carrier.

(J) Except as otherwise provided in commission rules, ETCs shall keep all books and records associated with its ETC designation and/or the commission's annual certification process in accordance with good business practices, and at such place as they are normally kept in the usual course of business. The ETC shall make its books and records associated with its ETC designation and/or the commission's annual certification process available to the commission at reasonable times for examination and inspection at a location designated by the commission.

(K) All records required by this rule shall be preserved for at least two (2) years.]

7. [(L)] ETCs, or carrier requesting ETC designation, shall promptly furnish requested information, including financial information, related to its designation as an ETC to the commission, its staff or the Office of the Public Counsel.

(C) Requirements applicable to ILECs

1. ILECs seeking certification by October 1 of each year shall, no later than August 15 of each year:

A. Submit a narrative discussing the use of the high-cost support as follows:

(I). Provision: A general description of any construction plans with start and end dates, populations affected by construction plans and estimated budget amounts, if applicable.

(II). Upgrade: The geographic areas for any improvements, start and completion date for each improvement, estimated investment for each project that is supported by high-cost funding, estimated population that will be served as a result of the improvements, if applicable.

(III). Maintenance: A general description of any on-going maintenance that is supported by high-cost funding, if applicable.

2. Submit a statement that costs incurred and/or estimated budget/investment amounts were no greater than necessary to provide consumers in the ILECs service area access to telecommunications and information services that are reasonably comparable to those services provided in urban areas.

3. Submit a demonstration that the receipt of high-cost support was used only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted.

A. For purposes of this section, "support is intended" is defined consistent with the Telecommunications Act which outlines the following principles:

(I). Quality and rates—quality services should be available at just, reasonable, and affordable rates;

(II). Access to advanced services—access to advanced telecommunications and information services should be provided in all regions of the state;

(III). Access in rural and high-cost areas—consumers in all regions of Missouri, including those in rural, insular and high-cost areas will have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(5) Additional Requirements.

(A) Each CMRS provider shall submit to the commission a letter reflecting a change to the name and/or change, deletion or addition of a trade name under which the ETC will be doing business in the state of Missouri, attaching, as applicable, an amended Certificate of Incorporation, Fictitious Name registration or an amendment thereof. The CMRS provider shall modify its current informational filing, as required in subsection (3)(D) to reflect the new name and shall attest that no revisions are being made, except for the name change.

(B) ETCs shall not self-certify to the Universal Service Administrative Company for receipt of federal universal service funds.

(C) ETCs, including incumbent local exchange telecommunications carriers, shall not willfully make any false entry in any business record of any kind kept by it, nor shall it willfully destroy, mutilate, alter or by any method falsify any such record, nor shall it willfully neglect or fail to make full, true and correct entries in such records of all facts and transactions appertaining to its business, nor shall it falsify any statement to the commission.

(D) Allegations of failure to comply with this rule shall be filed with the commission in the form of a formal complaint pursuant to 4 CSR 240-2.070. Resolution of the complaint may result in revocation of the ETC designation.

(E) The commission shall not certify, by October 1 of each year, any ETC, including incumbent local exchange telecommunications carriers, that fails to comply with these rules.

[(F) ETCs shall submit to the commission staff, by August 15, 2006, a statement of compliance with 4 CSR 240-3.570. All carriers with requests for ETC designation pending as of the effective date of this rule shall submit, within thirty (30) days of the effective date of the rule, any missing information required by 4 CSR 240-3.570 or a statement that all required information was previously submitted as part of the request for ETC designation.]

(F) An application for ETC designation shall be deemed to be acceptance of Missouri Public Service Commission jurisdiction over any issues related to ETC designation and status and USF funding and acceptance of additional rules made applicable to that ETC.

(G) Except as otherwise provided in commission rules, ETCs shall keep all books and records associated with its ETC designation and/or the commission's annual certification process in accordance with good business practices, and at such place as they are normally kept in the usual course of business. The ETC shall make its books and records associated with its ETC designation and/or the commission's annual certification process available to the commission at reasonable times for examination and inspection at a location designated by the commission.

(H) All records required by this rule shall be preserved for at least two (2) years.

AUTHORITY: sections 386.040, 386.250, 392.451 and 392.470, RSMo 2000. Original rule filed Oct. 31, 2005, effective June 30, 2006. Amended: filed October 1, 2007; effective*

**Original authority: 386.040, RSMo 1939; 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; 392.451, RSMo 1996; and 392.470, RSMo 1987.*