Robin Carnahan
Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

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SECRETARY OF STATE
ADMINISTRATIVE RULES

COPY

Rule Number 4 CSR 240-33.170

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

Name of person to call with questions about this rule:
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Data Entry same Phone FAX
Email address

Interagency mailing address Public Service Comm'n, Gov Ofc Bldg, 9th Fl, Jeff City

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:
(1), (3), (4), and (5)

Small Business Regulatory Fairness Board (DED) Stamp

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JOINT COMMITTEE ON
JAN 15 2009
ADMINISTRATIVE RULES

Robin Carnahan
Secretary of State

Administrative Rules Division
Rulemaking Transmittal Receipt

Rule ID: 9939
Date Printed: 2/17/2009
Rule Number: 4 CSR 240-33.170
Rulemaking Type: Final Order Rule
Date Submitted to Administrative Rules Division: 2/17/2009
Date Submitted to Joint Committee on Administrative Rules: 1/15/2009

Name of Person to Contact with questions concerning this rule:

Content: Cully Dale	Phone: 573-751-4255	Email: cully.dale@psc.mo.gov	Fax:
RuleDataEntry:	Phone:	Email:	Fax:

Included with Rulemaking:

Cover Letter	2/17/2009

Print Close

Missouri Public Service Commission

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February 17, 2009

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

Dear Secretary Carnahan:

Re: **4 CSR 240-33.170 Relay Missouri Surcharge Billing and Collections Standards**

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 17th day of February, 2009.

Statutory Authority: Sections 209.251, 209.253, 209.255, 209.257, 209.258, 209.259, 386.040, 386.250, 392.185(1)(2)(3) and(8), 392.470, 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
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BY THE COMMISSION

Colleen M. Dale
Secretary
Missouri Public Service Commission

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ADMINISTRATIVE RULES

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 33—Service and Billing Practices for Telecommunications Companies

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 209.251, 209.253, 209.255, 209.257, 209.258, 209.259, 386.040, 386.250, 392.185(1)(2)(3) and(8), 392.470, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-33.170 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 3, 2008 (33 MoReg 1942). 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 proposed rule was held December 3, 2008, and the public comment period ended December 3, 2008. Three (3) written comments were received and one (1) person testified at the hearing. Written comments were received from Comcast Phone of Missouri, LLC ("Comcast"), the VON Coalition and the staff of the Missouri Public Service Commission ("Staff"). The person testifying at the hearing was John VanEschen on behalf of the Staff. The Staff supports the proposed rule; Comcast and the VON Coalition oppose it.

COMMENT 1: Comcast asserts that no rule is necessary. The Staff asserts that a rule is necessary. Although it is true that the Relay Missouri Fund has operated since 1991 without a rule, the lack of a rule leaves the commission without any tools to ensure compliance with timely remission requirements.
RESPONSE: The commission agrees with Staff that properly promulgated rules are important for ensuring compliance with statutory mandates concerning the Missouri Relay Fund. No change is necessitated by this comment.

COMMENT 2: Comcast asserts that the commission lacks the authority to mandate the content of a VoIP provider's bill. Staff asserts that a clear description of the Relay Missouri Surcharge is necessary to avoid confusion.
RESPONSE AND EXPLANATION OF CHANGE: 2008's Senate Bill 1779, which took effect on August 28, 2008, exempts most telecommunications companies from the billing requirements in the Commission rules. As those waivers are separately listed in most company tariffs, the inclusion of a uniform billing requirement in the proposed rule will serve only to cause carriers to make additional requests to amend the list of waivers to include section (1), but will not result in any greater billing clarity. Therefore, the last sentence of section (1) will be deleted, as set forth fully below.

However, the commission encourages the use of the phrase "Relay Missouri Surcharge" on customer bills, so that the description is consistent among carriers.

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COMMENT 3: Comcast asserts that the proposed rule needs to address confidential treatment of information submitted pursuant to the rule.
RESPONSE: The commission disagrees. Section 386.480 RSMo 2000 already provides protection of information provided to the commission or its staff by companies to which the proposed rule would apply. Furthermore, 4 CSR 240-3.540(4) provides a mechanism whereby a telecommunications company that believes information contained in its annual report is non-public may protect that information by following the procedure set forth in the rule. No change will be made as a result of this comment.

COMMENT 4: Comcast asserts that the proposed rule's definition of "interconnected VoIP service provider" should be the same as in §386.020(23) RSMo 2000.
RESPONSE: The commission disagrees. The proposed rule does not contain a definition of "interconnected VoIP service provider"; as such the statutory definition fully applies. No change will be made as a result of this comment.

COMMENT 5: Staff asserts that the definition of "location" is necessary to prevent confusion and disparate treatment as the statute limits application of the surcharge to no more than 100 lines per location.
RESPONSE: The commission agrees. No change is necessitated by this comment.

COMMENT 6: Staff asserts that clarification that the surcharge is not subject to tax, as set forth in §209.255 RSMo 2000, is necessary.
RESPONSE: The commission agrees. No change is necessitated by this comment.

COMMENT 7: Staff asserts that reiteration of the *de minimus* exception, as set forth in §209.257 RSMo 2000, is necessary.
RESPONSE: The commission agrees. No change is necessitated by this comment.

COMMENT 8: Staff asserts that establishment of a deadline for remitting the surcharge is reasonable and necessary to limit disparate treatment and to assist in enforcing the remittance obligation.
RESPONSE: The commission agrees. No change is necessitated by this comment.

COMMENT 9: Staff questions the ability of the commission to assess a 1.5% late fee on delinquent remittances.
RESPONSE AND EXPLANATION OF CHANGE: Section 209.255.1 RSMo 2000 allows the commission to establish a rate recovery mechanism to recover the costs of implementing and maintaining the program. As those carriers who make untimely remittances, or fail to remit, raise the cost incurred to maintain the fund, it would seem reasonable to establish a mechanism by which those carriers that increase the costs are responsible for paying those costs. However, the same section further provides that the commission "shall not vary the amount of the surcharge between telephone companies..." In light of the requirement that all companies remit the same amount per access line, the late fee cannot be implemented without additional statutory clarification from the legislature. Therefore, subsections (4)(A), (B) and (C) will be deleted as set forth below.

COMMENT 10: Staff comments that the proposed rule provides that the Relay Missouri Statement information will be located at a stated location on the commission's web site. Staff believes that language should be removed from the rule, to allow the information to be placed at multiple locations on the commission's web site.
RESPONSE AND EXPLANATION OF CHANGE: The proposed deletion in section (5) is reasonable, and the location language will be removed, as fully set forth below.

COMMENT 11: Staff asserts that it is important to clarify in the rule that companies that are not required to remit surcharge funds need not submit the Relay Missouri Statement.
RESPONSE: The commission agrees. No change is necessitated by this comment.

COMMENT 12: Comcast asserts that proposed section (8) precludes submission of the information required therein through an affiliated competitive local exchange telecommunications company, as is presently permitted. Staff notes that proposed section (7) specifically allows remittance through an affiliate, as long as separate Relay Missouri Statements, for each remitting company, are provided.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Staff. To the extent that annual reports are presently filed by affiliates on a consolidated basis, nothing in section (8) precludes such a filing. However, such consolidated report will be required to separately identify the information required in section (8). No change is necessitated by this comment.

COMMENT 13: The VON Coalition asserts that the commission lacks the authority to regulate VoIP providers, that the commission cannot ascertain the jurisdictional nature of calls made over VoIP networks and that the FCC has indicated that states cannot regulate VoIP services or providers. Any attempted regulation is contrary to public policy in that it would stifle consumer benefits and slow broadband deployment.
RESPONSE: The commission disagrees with the VON Coalition's characterization of the FCC's recent decisions, as they are neither as sweeping nor as definitive as the VON coalition asserts. The application of the surcharge has absolutely nothing to do with the jurisdictional nature of the communications made in any given account. No review as to the jurisdictional nature of the underlying use of the line is made by any company, nor is intrastate use a prerequisite to assessment by either the FCC or the Missouri legislature under §209.251, *et seq*.

In addition, the commission notes that §392.550 gives it specific authority to require VoIP providers to collect and remit the Relay Missouri Surcharge:

> 4. Notwithstanding any other provision of law to the contrary, the public service commission shall have the following authority with respect to providers of interconnected voice over Internet protocol service and their provision of such service:
>
> (1) To assess and collect fees to support telecommunications programs under section 209.255, RSMo;

COMMENT 14: The VON Coalition asserts that applying a surcharge is sometimes impossible to assess, when some members of the VON coalition do not render monthly bills to their service subscribers, and some members render no bills.
RESPONSE AND EXPLANATION OF CHANGE: It is clear from the VON coalition's comments that some VoIP providers do not charge anything after the initial fee, but some render bills annually or some other regularly scheduled billing other than monthly. For those providers who do render bills, an assessment equal to the surcharge for each month of service shall be applied. This amount, assuming it is greater than the *de minimus* exception, shall be remitted to the commission within thirty (30) days after the last day of the calendar month in which the surcharge was collected. For those providers who do not render any bill after the initial service fee, as they cannot assess the surcharge, the *de minimus* exemption applies. Section (3) will be amended accordingly, as set forth below.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 33—Service and Billing Practices for Telecommunications Companies

PROPOSED RULE

4 CSR 240-33.170 Relay Missouri Surcharge Billing and Collections Standards

(1) A telecommunications company providing basic local telecommunications service or an interconnected Voice-over-Internet Protocol service provider shall apply a monthly surcharge to each customer bill as described in this rule.

(3) Pursuant to section 209.257, RSMo 2000, a company shall deduct and retain a certain portion of the total surcharge amount collected each month to recover the billing, collecting, remitting, and administrative costs attributed to the surcharge. The amount a company may retain is known as the "retention amount" and is determined by order of the Missouri Public Service Commission (commission) during a surcharge review. If the monthly amount collected is equal to or less than a minimum flat dollar retention amount set by the commission, the company may simply retain the amount collected from the surcharge. In such situations, the company will not be reimbursed for the difference between the surcharge revenue collected and the minimum retention amount. For companies that bill on a cycle other than monthly, an assessment equal to the surcharge for each month of service shall be applied to customers' bills, so that the remittance to the fund would be the same as if the customers were billed on a monthly basis.

(4) After deducting the retention amount described in section (3), the net revenue collected from the surcharge shall be remitted to the commission no later than thirty (30) days after the last day of the calendar month in which the surcharges were collected.

(5) A company shall compile and submit to the commission a monthly Relay Missouri Statement when remitting surcharge revenues pursuant to section (4) above. The form for compiling the Relay Missouri Statement is electronically available on the commission's web site. The Relay Missouri Statement shall include the following information: