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Missouri Public
Service Commission**Robin Carnahan**
Secretary of State**Administrative Rules Division
Rulemaking Transmittal Receipt**

Rule ID: 7718
Date Printed: 11/20/2007
Rule Number: 4 CSR 240-31.050
Rulemaking Type: Proposed Amendment
Date Submitted to Administrative Rules Division: 11/20/2007
Date Submitted to Joint Committee on Administrative Rules: 11/20/2007

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

Included with Rulemaking:

Cover Letter	11/20/2007
Affidavit for public cost	11/20/2007

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Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-31.050

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

Interagency mailing address Public Service Comm'n, 9th Floor Governor Office Bldg

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 **RECEIVED** Stamp

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REGULATORY FAIRNESS
BOARD

JCAR Stamp

JOINT COMMITTEE ON

NOV 20 2007

ADMINISTRATIVE RULES



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

TERRY JARRETT

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

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JEFFERSON CITY MISSOURI 65102
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WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration

ROBERT SCHALLENBERG
Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

November 20, 2007

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

Dear Secretary Carnahan:

Re: Proposed Amendment to 4 CSR 240-31.050

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed amendment lawfully submitted by the Missouri Public Service Commission for filing on this 19th day of November, 2007.

Statutory Authority: Sections 386.210.2 and 386.250 RSMo 2000.

Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rulemaking in light of the United States Supreme court decision in *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886 (1992). Pursuant to that order, I have undertaken a "takings analysis" of the above-referenced proposed rulemaking. In *Lucas*, the Court held that state regulation depriving an owner of real property of all economically beneficial use of that property constitutes a "taking" under the Fifth and Fourteenth Amendments of the U.S. Constitution, for which the property owner must be compensated. Adopting the proposed rulemaking does not implicate the takings clause of the U.S. Constitution, because the proposed rulemaking does not involve the taking of real property.

Section 536.300, RSMo Supp. 2006, requires state agencies to "determine whether the proposed rule amendments affect small businesses and, if so, the availability and practicability of less-restrictive alternatives that could be implemented to achieve the same results of the proposed rulemaking." Executive Order 03-15, which similarly addresses the impacts of rulemakings on small businesses, defines a small business to be "a for-profit enterprise consisting of fewer than one hundred full- or part-time employees" and elaborates

that a proposed rule "affects" a small business if it "impose[s] any potential or actual requirement" that "will cause direct and significant economic burden upon a small business, or that is directly related to the formation, operation, or expansion of a small business." Section 536.300.3, RSMo Supp. 2006, in part, provides: "If the state agency determines that its proposed rule does not affect small business, the state agency shall so certify this finding in the transmittal letter to the secretary of state, stating that it has determined that such proposed rule will not have an economic impact on small business . . ."

Proposed amendments to 4 CSR 240-31.050 do not impose requirements that have an economic impact on small businesses, that "will cause direct and significant economic burden upon a small business, or that is directly related to the formation, operation, or expansion of a small business." The Commission certifies that it has determined that the proposed rule will not have an economic impact on small businesses.

If there are any questions, 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

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SECRETARY OF STATE
ADMINISTRATIVE RULES

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

PROPOSED AMENDMENT

4 CSR 240-31.050 Eligibility for Funding—Low-Income Customers and Disabled Customers

PURPOSE: This amendment establishes processes for the Missouri Public Commission and its Staff to complete audits of customers receiving low income or disabled support in response to a recommendation of the Missouri Universal Service Fund external auditor.

(3) Individual Eligibility.

(D) Individuals who qualify for low-income or disabled support shall **complete a Board-approved application** ~~[certify in writing on an application designed for that purpose that they are eligible for the programs].~~

1. By completing the application, customers who qualify for low-income or disabled support shall:

A. ~~[Such application shall require the applicant to e]~~ Certify under penalty of perjury that the individual **or a dependent residing in the individual's household** receives benefits from one of the qualifying programs; ~~[and]~~

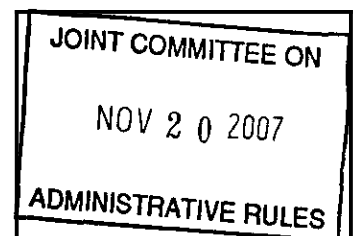
B. ~~fi]~~ Identify the program or programs from which that individual receives benefits;

C. Sign an authorization allowing, for the duration of the applicant's participation in the low-income or disabled support program, the appropriate federal, state or local agency to confirm to the commission or its staff that the individual or a dependent residing in the individual's household participates in the qualifying program(s) at the time the application is made, and as subsequently deemed necessary for purposes of annual verification or other examinations of eligibility; and

D. ~~[On the same document, a qualifying low-income or disabled individual also must a]~~ Agree to notify the carrier if that individual ceases to participate in the program or programs.

2. Customers who qualify for low-income or disabled support shall provide documentation of participation in the applicable program(s) as identified on the application.

A. The telecommunications company shall develop a process for recording the type of documentation received; and



B. The telecommunications company shall develop a process for returning or destroying the documentation once recorded.

3. ~~[Such]~~ **The** application shall be used to certify individuals for both state and federal low-income support.

4. The companies shall rely upon ~~[this certification]~~ **application and documentation of participation** to provide the benefits under these programs until individuals advise the company that they are no longer qualified, ~~[or]~~ until the company is advised by the **commission or its staff** ~~[administrator]~~ that individuals ~~[may not be]~~ **are not** eligible, **or until the company does not receive annual verification as contemplated in subsection (E).**

(E) The telecommunications company shall ~~[by December 31, 2005,]~~ establish state procedures to verify a customer's continued eligibility for the low-income or disabled customer program.

1. State verification procedures may include, but are not limited to, compliance with federal verification requirements, processes or guidelines. ~~[random beneficiary surveys; periodic]~~

2. **Whenever an individual requests support on the basis of participation in any program other than that initially identified, State verification procedures shall include self-certification updates and documentation of participation for any program in which an individual has not previously self-certified and documented** ~~[submission of documentation showing participation in qualifying programs; or and periodic self-certification updates].~~

A. The telecommunications company shall develop a process for recording the type of documentation received; and

B. The telecommunications company shall develop a process for returning or destroying the documentation once recorded.

3. A copy of ~~[these]~~ **the telecommunications company verification** procedures shall be made available to the commission staff and/or the Office of Public Counsel for review within thirty (30) days of request. If, upon review, the commission staff and/or the Office of Public Counsel have concerns about the sufficiency of a company's verification procedures, the commission staff and/or the Office of Public Counsel shall present those concerns to the Missouri Universal Service Board for review.

(F) The telecommunications company shall terminate an individual's enrollment in the low-income customer or disabled customer program if the ~~[customer]~~ **individual** ceases to meet eligibility requirements **or refuses to authorize the appropriate federal, state or local agency to confirm to the commission or its staff that the individual or a dependent residing in the individuals household participates in one of the qualifying programs.** Notification of impending termination shall be in the form of a letter separate from the individual's monthly bill. Individuals shall be allowed sixty (60) days following the date of the impending termination letter to demonstrate continued eligibility to the telecommunications company. The telecommunications company shall terminate discounted services supported by the low-income customer or disabled customer program to any customer who fails to demonstrate continued eligibility within the sixty (60)-day time period.

(G) Any eligible individual submitting an application within sixty (60) days of initiating service will be entitled to the applicable low-income or disabled discounts from the date of service initiation. If applicable, the company may provide either a refund or credit, as determined by the company. Any eligible individual submitting an application after sixty (60) days of initiating service will begin receiving the appropriate discounts on a prospective basis.

(H) **The commission or its staff shall** ~~[The Fund Administrator shall be authorized by the board to]~~ conduct **periodic, random** audits of individual self-certification using records that can be lawfully made available from the **agencies administering** ~~[rators of]~~ qualifying programs. **In the event records from the agencies administering the qualifying programs cannot lawfully be made available, the commission or its staff shall conduct audits using the records of the telecommunications company.** If as a result of these audits, the ~~[administrator]~~ **commission or its staff** determines that a recipient may not be eligible for low-income or disabled support, the individual shall be required to verify eligibility **as permitted by 4 CSR 240-31.050(F)** ~~[for continuing to receive support pursuant to administrative procedures established by the Fund Administrator and approved by the board].~~

AUTHORITY: Section 392.210.2 392.248, and 386.250(2) RSMo 2000.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately seventy-nine thousand, six hundred thirty-two dollars (\$79,632) in the aggregate; see attached fiscal note.

PRIVATE COST: This proposed rule will cost private entities approximately fifty-two thousand dollars (\$52,000) in the aggregate; see attached fiscal note.

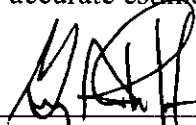
NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Cully Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, written comments must be received no later than 10:00 am on February 5, 2008

and should include a reference to commission Case No. TX-2008-0122. Comments may be submitted via a filing using the commission's electronic filing and information system and <http://www.psc.mo.gov/efis.asp>. A public hearing regarding this proposed rule is scheduled for February 5, 2008 at 1:00 pm in Room 310 of the Governor Office Building, 200 Madison Street, 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 or TDD Hotline 1-800-829-7541.

AFFIDAVIT
(PUBLIC COST)

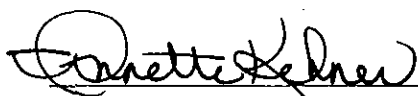
STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Gregory A. Steinhoff, Director of the Department of Economic Development, first being duly sworn on my oath, state that it is my opinion that the attached fiscal note for proposed rule 4 CSR 240-31.050 is a reasonably accurate estimate.



Gregory A. Steinhoff
Director
Department of Economic Development

Subscribed and sworn to before me this 7th day of November, 2007. I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on 17 JULY 11.



NOTARY PUBLIC



**FISCAL NOTE
PUBLIC COST**

- I. Department Title: Department of Economic Development
Division Title: Missouri Public Service Commission
Chapter Title: Chapter 31 – Missouri Universal Service Fund**

Rule Number and Name:	4 CSR 240-31.050 – Eligibility for funding – Low Income Customers and Disabled Customers
Type of Rulemaking:	Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Public Service Commission	\$79,632

III. WORKSHEET

1. The estimated cost of compliance assumes PSC Staff will annually audit 1% of the qualifying customers.
2. Estimated cost of compliance assumes PSC Staff will review telecommunications records and verify eligibility with federal and state agencies.
3. Estimated cost assumes audits will take place as PSC caseload allows. Additional FTE were not included in the estimate.

IV. ASSUMPTIONS

1. The life of the rule is estimated to be four years (to the end of the current administrator contract if all renewal options are exercised).
2. Fiscal year 2007 dollars were used to estimate costs. No adjustment for inflation is applied.
3. Estimates assume no sudden change in technology that would influence costs.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: Department of Economic Development
Division Title: Missouri Public Service Commission
Chapter Title: Chapter 31 – Missouri Universal Service Fund**

Rule Number and Title:	4 CSR 240-31.050 Eligibility for Funding – Low Income Customers and Disabled Customers
Type of Rulemaking:	Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities* which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
4	Class A Local Telephone Companies	\$52,000
37	Class B Local Telephone Companies	\$0
5	Class C Local Telephone Companies	\$0
	All entities	\$52,000

* Class A Telephone Companies are incumbent local telephone companies with more than \$100,000,000 annual revenues system wide; Class B Telephone Companies are incumbent local telephone companies with \$100,000,000 annual revenues or less system wide; Class C Local Telephone Companies are all other companies certificated to provide basic local exchange telecommunications services

III. WORKSHEET

1. The proposed rule applies to all incumbent local exchange telecommunications companies and competitive local exchange carriers that have received eligible telecommunications carrier designation.

IV. ASSUMPTIONS

1. The life of the rule is estimated to be four years (consistent with the term of the current fund administrator contract assuming all renewal options are exercised).
2. Fiscal year 2007 dollars were used to estimate costs. No adjustment for inflation is applied.
3. Estimates assume no sudden change in technology that would influence costs.
4. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission rules and regulations.

Small Business Regulator Fairness Board

Small Business Impact Statement

Date: 9-14-07

Rule Number: 4 CSR 240-31.050

Name of Agency Preparing Statement: 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: Colleen Dale

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*).

Many of the telecommunications carriers directly affected by the proposed amendment are small businesses. Proposed amendment language was submitted to the telecommunications industry for informal comment. Based on those comments language proposing annually updated customer authorizations was changed to require an initial authorization at the time a low-income or disabled customer requests support, with subsequent authorizations if a customer qualifies for low-income or disabled support under a different federal or state social program. Changing the requirement reduced the estimated fiscal impact on small businesses.

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

The proposed amendment was shared with telecommunications carriers that meet the definition of small business. Changes were made to the language to reduce the estimated fiscal impact of the proposed amendment based on feedback from those carriers.

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.

The monetary costs to the MoPSC for the four year life of the rule is estimated at \$79,632_[d1].

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

Incumbent local exchange telecommunications carriers and competitive local exchange carriers that have been designated as eligible telecommunications carriers will be required to comply with this rule. The carriers will need to develop new processes to record the type of documentation received as proof of a customer's eligibility in low-income or disabled programs.

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

There are no anticipated direct or indirect costs associated with small business compliance with this proposed amendment.

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

Incumbent local exchange telecommunications carriers and competitive local exchange carriers that have been designated as eligible telecommunications carriers will be directly affected by the proposed amendment.

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.

An independent, external audit of the Missouri Universal Service Fund (MoUSF) contained a recommendation that the MoUSF Board complete annual audits of one percent of the low income/disabled customers receiving support from the fund. The proposed amendment establishes processes for the MoPSC, its Staff and the telecommunications carriers to implement this audit recommendation.

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