# MEMORANDUM

**TO:** Colleen M. Dale, Secretary

**DATE:** February 14, 2008

**RE:** Authorization to File Final Order of Rulemaking with the Office of Secretary of State

**CASE NO:** TX-2008-0122

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

**Amendment to 4 CSR 240-31.050 – Eligibility for Funding - Low-Income Customers and Disabled Customers**

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 - 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 _____

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

JCAR Stamp

JOINT COMMITTEE ON
FEB 19 2008
ADMINISTRATIVE RULES

# *Missouri Public Service Commission*

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March 21, 2008

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

Dear Secretary Carnahan:

Re: **4 CSR 240-31.050 Eligibility for Funding – Low-Income Customers and Disabled Customers**

## 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 21st day of March, 2008.

Statutory Authority: Sections 386.250, 392.210, and 392.248 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 31 – Missouri Universal Service Fund**

## ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250, 392.210, 392.248 and 392.470 RSMo 2000 and 392.200 RSMo Supp. 2006, the commission amends a rule as follows:

**4 CSR 240-31.050 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 2, 2008 (33 MoReg 26). 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 February 5, 2008, and the public comment period ended February 5, 2008. Two (2) written comments were received and two (2) people testified and two people commented at the hearing. Written comments were received from AT&T Missouri and the staff of the Missouri Public Service Commission. The people testifying at the hearing were Mike Scheperle and Natelle Dietrich on behalf of the staff of the Missouri Public Service Commission. The commenters were Michael Dandino on behalf of the Public Counsel and Robert J. Gryzmala. The Staff and the Office of the Public Counsel support the proposed amendments; AT&T opposes them.

COMMENT: The present self-certification process has been in place for six years and no evidence that fraud is rampant has been uncovered. The presently required attestation of eligibility made under penalty of perjury is sufficient.
RESPONSE: The Commission agrees that no widespread fraud has been uncovered, because no effective audit procedure has been in place. Self-certification alone is not sufficient to assess whether a significant number of recipients are eligible for assistance. No changes will be made based on these general comments.

COMMENT: The Notice of Finding Necessity and proposed rulemaking are deficient in that the audit of the USF that gave rise to the proposed amendment is not contained in the record, and the fact that the commenter possessed a copy thereof did not cure this deficiency.
RESPONSE: The commenter misreads the case law pertaining to non-contested cases, in which a sufficient evidentiary record is not required. The commenter correctly restates the statutory standards that require "a finding that the rule is necessary to carry out the purposes of the statute that granted such rulemaking authority" and that a notice of proposed rulemaking contain an explanation of any proposed rule or change to an existing rule, as well as "the reasons therefore." Although the commenter asserts that

neither statutory requirement has been met here, the commission disagrees and believes that both requirements are fully met. No changes will be made based on these comments.

COMMENT: Applicants for assistance should not be required to provide documentation of participation in a qualified program to be eligible for support. This merely presents another hurdle to people who are already struggling.
RESPONSE: The commission disagrees. Applicants may provide any sort of documentation that demonstrates eligibility for or receipt of support from the qualifying programs. The commission is cognizant of the potential harm by creating a burdensome application process, but does not consider the documentation requirement to be overly burdensome. No change will be made as a result of this comment.

COMMENT: Telecommunications companies should not be required to use a board-approved application form. "Rather, each company should be permitted to prepare its own form (containing company-specific information) and submit it to the board for its approval with respect only to the form's substantive content."
RESPONSE: the commission agrees that telecommunications companies should be able to submit forms for board approval, and use them once they are approved. That is the intent behind the phrase "a board-approved" application rather than "the board-approved" application. No changes are necessary as a result of this comment.

COMMENT: The requirement that telecommunications companies receive, record and return or destroy documentation is unduly burdensome for the companies and will require those receiving the documentation to make a value judgment on the sufficiency of the documentation.
RESPONSE: The commission does not ask for or want such a value judgment by company employees. The rule merely asks the telecommunications company employee to record a description of the documentation received. Eligibility will continue to hinge on the self-certification; the documentation is requested to provide a meaningful opportunity to audit the program. No change will be made as a result of this comment.