

**FILED**

SEP 30 2008

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

Rule ID: 9212
Date Printed: 9/30/2008
Rule Number: 4 CSR 240-33.170
Rulemaking Type: Proposed Rule
Date Submitted to Administrative Rules Division: 9/30/2008
Date Submitted to Joint Committee on Administrative Rules: 9/30/2008

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

9/30/2008

Affidavit for public cost

9/30/2008

Print Close

Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

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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:

Content Cully Dale Phone 751-4255 FAX

Email address cully.dale@psc.mo.gov

Data Entry same Phone FAX

Email address

Interagency mailing address Public Service Comm'n, 200 Madison, 9th Fl, Jeff City, 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

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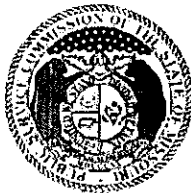
**REGULATORY FAIRNESS
BOARD**

JCAR Stamp

JOINT COMMITTEE ON

SEP 30 2008

ADMINISTRATIVE RULES



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

ROBERT M. CLAYTON III

TERRY JARRETT

KEVIN D. GUNN

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>

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

September 30, 2008

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

Dear Secretary Carnahan:

Re: Proposed Rule 4 CSR 240-33.170

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rule lawfully submitted by the Missouri Public Service Commission for filing on this 30th day of September, 2008.

Statutory Authority: Sections 209.251, 209.253, 209.255, 209.577, 209.258, 209.259, 386.040, 386.250, 392.185(1), (2), (3) and (8), and 392.470 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.

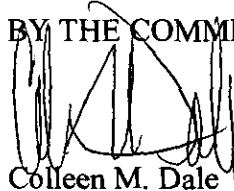
Section 536.300, RSMo Supp. 2007, requires state agencies to "determine whether the proposed rule amendments affect small businesses and, if so, the availability and practicability of less-restrictive alternatives that could be implemented to achieve the same results of the proposed rulemaking." Executive 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. 2007, 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 rule 4 CSR 240-33.170 does 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

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over the printed name.

Colleen M. Dale
Secretary

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

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SECRETARY OF STATE
ADMINISTRATIVE RULES

PROPOSED RULE

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

PURPOSE: This rule establishes uniform standards for telecommunications companies and interconnected voice over Internet protocol service providers to bill, collect and remit the Relay Missouri Surcharge. The purpose of this surcharge is to generate funding for a statewide dual-party relay system and a statewide telecommunications distribution program as prescribed by Sections 209.251 through 209.259 RSMo 2000.

(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. The surcharge shall be identified on the bill as the "Relay Missouri Surcharge" (hereinafter referred to as the surcharge).

(A) The surcharge shall be applied to all of the following lines except as described in subsection (B):

1. Single and multi-line residential and business access lines;
2. Centrex or private branch exchange lines. One private branch exchange line is counted as one basic access line. The number of Centrex lines per subscriber location subject to the surcharge will equal the number of Centrex stations capable of being used simultaneously;
3. Direct inward dial lines;
4. Company employee concession lines;
5. Voice-grade channels for DS-1 or higher band-width facilities; and
6. Interconnected voice over Internet protocol service lines.

(B) The surcharge shall not be applied on:

1. More than one hundred (100) lines per subscriber per location. For purposes of this rule, location is defined as any building or buildings held under common ownership and located on a contiguous plot of ground and not divided by a city street or public thoroughfare; or
2. Any line used to provide pay telephone service.

(2) The surcharge is exempt from taxes identified in Chapter 144 RSMo 2000 and shall not be construed as gross receipts or revenue collected by the company for the purpose of local taxation.

(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

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SEP 30 2008

ADMINISTRATIVE RULES

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.

(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 30 days after the last day of the calendar month in which the surcharges were collected.

(A) Remittances are deemed delinquent on the 31st day after the last day of the calendar month in which the surcharges were collected.

(B) For each calendar month in which the surcharge remittance is delinquent a telecommunications company shall remit a late payment fee of 1.5 percent per month applied to the surcharge remittance amount owed. For example: If a remittance of \$200 were due no later than July 1, but was received on September 9, a fee of 1.5 percent would be applied for each month the payment was late, starting on July 2, and applied every month thereafter until remittance. In this example, the amount due would have a 1.5% late fee (\$3) applied three times, for July, August and September, for a total required remittance of \$209.

(C) The commission may, for good cause shown, waive the late fee.

(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 under Relay Missouri Surcharge Information. The Relay Missouri Statement shall include the following information:

(A) The month for which the submitted revenue was collected;

(B) The name of the company as authorized to provide basic local telecommunications service or interconnected voice over Internet protocol service in Missouri;

(C) The number of lines against which the surcharge was billed;

(D) Total surcharge revenue collected;

(E) The retention amount;

(F) The surcharge revenue remitted to the commission; and

(G) The name and contact information of the responsible person submitting the statement.

(6) If a company does not remit surcharge revenue, the company need not submit the monthly Relay Missouri Statement; however the company shall make such information available to the commission or its staff upon request. This information shall be retained for a two year time period.

(7) No company shall submit surcharge revenues on another company's behalf without submitting separate Relay Missouri Statement forms for each company, as described in section (5).

(8) All companies shall supply information related to the billing and collection of the surcharge in the company's annual report submitted to the commission. This information will include monthly totals during the calendar year for: the revenue collected through the surcharge, the retention amount, and the total surcharge revenue submitted to the commission, if any.

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.

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

PRIVATE COST: This proposed rule will not cost private entities more than six thousand dollars (\$6,000) in the aggregate.

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, Colleen M. Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register and should include a reference to commission Case No. TX-2008-0392. Comments may also 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 December 3, 2008 at 1:30 p.m. in Room 305 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.

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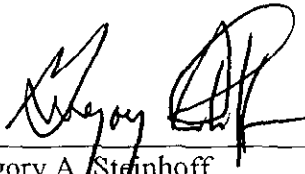
PUBLIC COST

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 cost of proposed rule, 4 CSR 240-33.170, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

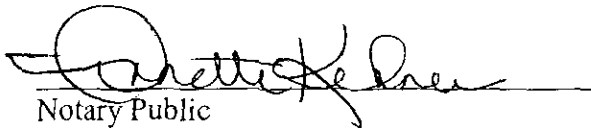


Gregory A. Steinhoff

Director

Department of Economic Development

Subscribed and sworn to before me this 21st day of July, 2008, I am commissioned as a notary public within the County of COLE, State of Missouri, and my commission expires on 17 July 2011.


Notary Public