

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 38.5.1307 and the repeal of) REPEAL
ARM 38.5.1305, 38.5.1309,)
38.5.1311, 38.5.1313, and 38.5.1315)
pertaining to Telephone Extended)
Area Service)

TO: All Concerned Persons

1. On March 12, 2015, the Department of Public Service Regulation published MAR Notice No. 38-5-228 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 265 of the 2015 Montana Administrative Register, Issue Number 5.

2. The department has repealed the above-stated rules as proposed.

3. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

38.5.1307 EAS -- GENERAL (1) The repeal of these rules does not affect the status of any existing EAS ~~program~~ arrangement.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: A commenter suggested that ARM 38.5.1307 be amended to provide a savings clause, specifically that the language should read, "the repeal of these rules shall not negate, invalidate, amend, or otherwise revoke, cancel or alter any existing EAS arrangements or call transport and termination agreements or Commission orders."

RESPONSE 1: The commission appreciates the suggestion, but feels that the proposed language is unnecessary and potentially confusing.

COMMENT 2: A commenter agreed with the first comment that ARM 38.5.1307 should be amended to provide a savings clause.

RESPONSE 2: The commission reiterates its response to comment 1.

COMMENT 3: A commenter explained the current calling situation in Montana and the need to repeal the existing EAS rules. The commenter further explained that the existing rules are obsolete and contribute to an unlevel playing field. The

commenter believes the language proposed by the commission is adequate and that technically even the proposed language is unnecessary since it is legally presumed that prior commission orders remain valid and binding since they were adopted by rules in place at the time. The commenter stated they would not object to replacing "program" with "arrangement" in the commission's proposed language, as long as it is understood that "reciprocal compensation arrangements" (as that term is used in 47 U.S.C. §251(b)(5)) is a different type of agreement, legally distinct from "EAS agreements." The commenter stated they believe that the rest of the additional language proposed by other commenters is unnecessary and potentially confusing. The commenter argues that the terms "Call transport and termination agreements" and "Commission Orders" are broad and undefined, and could cause confusion. "Transport and termination agreements" could refer to Interconnection Agreements per 47 U.S.C. §251(c); and "Commission orders" are not necessarily limited to "EAS Orders."

The commenter also noted that it is their interpretation of this proposed rule, that it would not prevent the expansion of EAS calling regions by mutual (formal or informal) consent of two or more carriers, regardless of prior commission orders. They also emphasized that telephone companies will remain free to unilaterally implement any type EAS arrangement they choose, without agreements or commission approval, if the company chooses to continue to pay existing tariffed switched access charges for "long distance" traffic.

The commenter requested that the commission repeal the existing EAS rules. They state the language of ARM 38.5.1307 proposed by the commission is unnecessary, but not harmful if interpreted correctly.

RESPONSE 3: The commission agrees that the proposed language from other commenters is unnecessary and could be confusing. The commission also agrees that the word "program" should be changed to "arrangement" and will amend the rule.

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

/s/ BRAD JOHNSON
Brad Johnson
Chairman
Department of Public Service Regulation

Certified to the Secretary of State August 3, 2015.