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SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."



MATT BLUNT

SECRETARY OF STATE

**MISSOURI
REGISTER**

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

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HOW TO CITE RULES AND RSMo

RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2002.

EXECUTIVE ORDER 04-16

WHEREAS, the Board of Aldermen of the City of Licking, Missouri, has resolved that it is advisable and necessary that a special census be taken within the City of Licking, Missouri; and

WHEREAS, a Resolution directing that a special census be taken within the City of Licking, Missouri, was passed by the Board of Aldermen of said City on the 11th day of April, 2004; and

WHEREAS, a copy of said Resolution certified to by the City Clerk of the City of Licking, has been presented to the Governor of the State of Missouri.

NOW, THEREFORE, I, BOB HOLDEN, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and Laws of the State of Missouri, do hereby order a special census to be taken within the City of Licking, Missouri, pursuant to Section 71.160, RSMo.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 23rd day of July, 2004.





Bob Holden
Governor

ATTEST:



Matt Blunt
Secretary of State

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbolology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

the licensee's gaming establishment must be submitted for approval to the commission at least fifteen (15) days prior to the start of the tournament on a tournament request form provided by the commission. As used in this rule, a tournament is a contest offered and sponsored by a Class A licensee in which patrons may be assessed an entry fee, or are selected through some other criteria approved by the commission, to compete against one another in a gambling game or series of gambling games in which winning patrons receive a portion or all of the entry fees, which may be increased with cash or non-cash prizes from the Class A licensee.

[(4) Promotional coupons shall be submitted to the commission for approval prior to usage and shall include the following:

- (A) The name of the riverboat(s);*
- (B) The city or other locality and state where establishment is located;*
- (C) Specific value;*
- (D) Sequential identification numbers for tracking; and*
- (E) Expiration dates.]*

AUTHORITY: sections 313.004, 313.805 and 313.817, [RSMo 1994] and 313.807, RSMo [Supp. 1998] 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Amended: Filed Nov. 10, 1997, effective June 30, 1998. Amended: Filed May 6, 1999, effective Dec. 30, 1999. Amended: Filed July 9, 2004.

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

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) 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 Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for 10 a.m. on September 21, 2004, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

Proposed Amendment Text Reminder:
Boldface text indicates new matter.
[Bracketed text indicates matter being deleted.]

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming**

PROPOSED AMENDMENT

11 CSR 45-5.180 Tournament Chips[, Tokens, and Promotional Coupons] and Tournaments. The commission is amending section (3) and deleting section (4).

PURPOSE: *The commission proposes to amend this rule by clarifying the requirements for the approval of tournaments.*

(3) *[As used in this rule, promotional coupon means a coupon issued by a licensee for use in gambling related licensed gambling games at the licensee's gaming establishment.] No licensee may conduct a tournament without approval of the commission. Any tournament conducted by a licensee at*

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming**

PROPOSED RULE

11 CSR 45-5.181 Giveaways and Promotions

PURPOSE: *This rule defines and clarifies the requirements for approval of giveaways and promotions.*

- (1) For the purposes of this rule, the following words are defined as:
- (A) Giveaway—a gift or promotional item provided by a licensee to any person meeting the licensee's promotional criteria, where the person provides no consideration and there is no chance or skill involved in the awarding of the gift or promotional item;
 - (B) Patron—any person present on the premises of a Class A licensee that is not employed by such Class A licensee or the

commission and is not on the premises as a vendor of the Class A licensee;

(C) Promotional coupon—any instrument offering any person something of value and issued by a Class A licensee for use in or related to licensed gambling games at a licensee's gaming establishment;

(D) Promotional game—a contest or game in which patrons of a Class A licensee may, without giving consideration, compete for the chance to win a prize.

(2) Class A licensees may provide giveaways to patrons or their employees without the approval of the commission, provided the giveaway complies with all applicable laws.

(3) Class A licensees may conduct promotional games as a part of licensed gambling operations provided that any promotional game does not constitute illegal gambling under federal or state law and the licensee provides to the commission at least ten (10) days prior to conducting the promotional game an affidavit in a form approved by the commission and signed by a legal counsel of the licensee certifying that the promotional game complies with all applicable laws.

(4) No licensee may issue a promotional coupon without approval of the commission. Promotional coupons must be submitted to the commission for approval at least fifteen (15) days prior to the requested date of issuance and shall include the following:

(A) The name of the riverboat(s);

(B) The city or other locality and state where the establishment is located;

(C) Specific value;

(D) Sequential identification numbers for tracking and accounting purposes;

(E) Expiration dates or condition;

(F) All conditions required to redeem the coupon; and

(G) A statement that any change or cancellation of the promotion must be approved by the commission prior to the change or cancellation.

AUTHORITY: sections 313.004 and 313.805, RSMo 2000. Original rule filed July 9, 2004.

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 five hundred dollars (\$500) 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 rule with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10 a.m. on September 21, 2004, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming**

PROPOSED AMENDMENT

11 CSR 45-5.290 Bingo Games. The commission is amending subsection (1)(A).

PURPOSE: The commission proposes to amend this rule by further defining the term "bingo games."

(1) The following words and terms, when used in this rule, shall have the following meanings:

(A) "Bingo games," all games commonly known as bingo, as defined in section 313.005(1), RSMo, and **any variation thereof, including but not limited to electronic bingo games, bingo games played on electronic gaming devices, and promotional bingo games;**

AUTHORITY: sections 313.004 and 313.805, RSMo 2000. Original ruled filed Dec. 7, 2001, effective June 30, 2002. Amended: Filed July 9, 2004.

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

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) 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 Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10 a.m. on September 21, 2004, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

**Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 10—County Employees' Defined
Contribution Plan**

PROPOSED AMENDMENT

16 CSR 50-10.070 Vesting and Service. The board is adding a new section (4).

PURPOSE: This amendment clarifies that participants' accounts become vested upon termination of the plan or complete discontinuance of contributions.

(4) Upon the termination of the plan or complete discontinuance of contributions, all participants' accounts shall become fully vested, and shall not thereafter be subject to forfeiture.

AUTHORITY: sections 50.1090, RSMo 2000 and 50.1250, RSMo Supp. [2001] 2003. Original rule filed May 9, 2000, effective Jan. 30, 2001. Amended: Filed April 25, 2002, effective Nov. 30, 2002. Amended: Filed July 13, 2004.

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

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the County Employees' Retirement Fund, PO Box 2271, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

**Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and
Division of Personnel
Chapter 4—Appeals, Investigations, Hearings
and Grievances**

ORDER OF RULEMAKING

By the authority vested in the Personnel Advisory Board under section 36.070, RSMo 2000, the board amends a rule as follows:

1 CSR 20-4.010 Appeals is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 577-583). No changes have been made in the text of the proposed amendment, so it is not 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 June 8, 2004, and the public comment period ended June 8, 2004. At the hearing the Personnel Advisory Board explained the proposed amendment and two (2) comments were received. In addition the board received one (1) written comment.

COMMENT: Two (2) comments were made at the hearing expressing concern about the board ordering mediation.

RESPONSE: The board wanted to include the option of ordered mediation; however, they assume it will only be used on rare occa-

sions. No changes have been made to the rule as a result of these comments.

COMMENT: One (1) written comment was received in support of the proposed amendments.

RESPONSE: No changes have been made to the rule as a result of this comment.

**Title 2—DEPARTMENT OF AGRICULTURE
Division 80—State Milk Board
Chapter 5—Inspections**

ORDER OF RULEMAKING

By the authority vested in the State Milk Board under section 196.939, RSMo 2000, the board hereby amends a rule as follows:

2 CSR 80-5.010 Inspection Fees is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2004 (29 MoReg 709-710). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No public hearing was held. No written comments were received during the comment period.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-5.205 Permits Required; Exceptions is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2004 (29 MoReg 885). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-5.352 Resident Firearms Antlerless Deer Hunting Permit is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2004 (29 MoReg 885). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission rescinds a rule as follows:

3 CSR 10-5.353 Resident Firearms Second Bonus Deer Hunting Permit is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on June 1, 2004 (29 MoReg 886). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-5.425 Resident Archery Antlerless Deer Hunting Permit is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2004 (29 MoReg 886–887). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-5.552 Nonresident Firearms Antlerless Deer Hunting Permit is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2004 (29 MoReg 888). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission rescinds a rule as follows:

3 CSR 10-5.553 Nonresident Firearms Second Bonus Deer Hunting Permit is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on June 1, 2004 (29 MoReg 888). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission adopts a rule as follows:

3 CSR 10-5.554 Nonresident Archery Antlerless Deer Hunting Permit is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 2004 (29 MoReg 888–889). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons,
Methods, Limits**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-7.440 is amended.

This amendment establishes hunting seasons and limits and is excepted by section 536.021, RSMo from the requirement for filing as a proposed amendment.

The Department of Conservation amended 3 CSR 10-7.440 by establishing seasons and limits for hunting migratory waterfowl during the 2004–2005 seasons.

3 CSR 10-7.440 Migratory Game Birds and Waterfowl: Seasons, Limits

PURPOSE: This amendment establishes season dates and bag limits for hunting waterfowl within frameworks established by the U. S. Fish and Wildlife Service for the 2004–2005 seasons.

(1) Migratory game birds and waterfowl may be taken, possessed, transported and stored as provided in federal regulations. The head or one (1) fully feathered wing must remain attached to all waterfowl while being transported from the field to one's home or a commercial preservation facility. Seasons and limits are as follows:

(E) Blue-winged, green-winged and cinnamon teal may be taken from sunrise to sunset from September 11 through September 19. Limits: four (4) teal in the aggregate of species daily; eight (8) in possession.

SUMMARY OF COMMENTS: Seasons and limits are excepted from the requirement of filing as a proposed amendment under section 536.021, RSMo.

This amendment filed July 6, 2004, effective **July 20, 2004**.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 30—Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects Chapter 2—Code of Professional Conduct

ORDER OF RULEMAKING

By the authority vested in the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects under sections 327.041, RSMo Supp. 2003 and 327.441, RSMo 2000, the board withdraws a proposed rule as follows:

4 CSR 30-2.040 Standards of Care is **withdrawn**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2004 (29 MoReg 632). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: The board received one (1) comment in support of and five (5) comments opposing the proposed rule.

COMMENT: The Home Builders Association of Greater St. Louis submitted a comment opposing section (1) of the rule stating that the association is a strong supporter of building codes on the local level, however, does not support the concept of a statewide building code. The association feels the proposed rule is purely a backdoor approach to require statewide building codes, which over many years the Missouri General Assembly has declined to pass. If this is a worthy policy goal, then the Missouri General Assembly should be the one to set such a policy for the State of Missouri, not a licensing board. Further, when their local governments adopt building codes, they make amendments to make it consistent with local practice, standards and situations unique to the area. For counties or municipalities in their region that do not have codes adopted, this would in

effect enforce a national model code with no local amendments and no say by the local government or its citizens. In a democratic society, it should be up to the governments adopting building codes to say what code they choose to adopt, if any, and what amendments they choose to make. It should not be forced upon them in a backdoor effort through an obscure provision of a licensing rule promulgated by a licensing board. When no code is specified in some communities, establishing just a broad, non-specific set of requirements (i.e.—the “most recent applicable codes as published by the International Codes Council” or ICC) can have very punitive repercussions. One such problem this would prompt is—who would decide what seismic map would be required in what area? The requirements change based on what part of the map you are located. The maps in the ICC code are not easy to read. Local governments have been determining what seismic category their community falls in for purposes of what code requirements will be required. Would the licensing board make this decision for every plan that is drawn in the parts of the state that do not have local codes? Would the licensing board just choose the most stringent category by default? This is just one example of the pitfalls with which this rule is fraught. There are many people who have spent countless hours reviewing building code sections, meeting with various code officials and applying real world applications into a working code document that can be accepted by plan reviewers, code officials, fire marshals, etc. Absent specific code requirements, the default code becomes much more onerous to work under for the builder, and more difficult to enforce by code officials. This would cut out all the interested parties and take away their right and duty to participate in such a code adoption process, by being preempted on the state level. Further, do the “most recent applicable codes” include all of the following ICC codes?

- ICC Residential Code
- ICC Building Code
- ICC Plumbing Code
- ICC Sewage Disposal Code
- ICC Mechanical Code
- ICC Performance Code
- ICC Urban-Wildland Interface Code
- ICC Fire Code
- ICC Fuel Gas Code
- ICC Energy Conservation Code
- ICC Property Maintenance Code
- ICC Existing Building Code
- ICC Zoning Code
- ICC Electrical Code

In addition, many of the areas that do not have building codes, do not have inspectors either. Who would enforce the requirements? It provides a false sense of security. Further, this would simply, unnecessarily and unwittingly place the builder in a position of great potential liability. When the rule talks of “most recent,” what makes it “most recent”? Does that include all of the errata sheets with changes that are frequently published by the ICC? If so, how does an architect or a builder know about those changes if there is no local code adoption? Making the “most recent applicable codes as published” the “default” in communities without a specific set of building codes is a very dangerous precedent to set. If a licensing board can adopt this rule, what is to stop it from adopting other rules against the wishes of the Missouri General Assembly? . . . or other state boards from adopting as rules requirements that have been voted down repeatedly by the Missouri General Assembly? This is an arbitrary and capricious action. The St. Louis home builders have always supported the right of every county and municipality in the state to adopt building codes. We believe that such adoption by all counties and municipalities would be beneficial to the consumers and to public health and safety. This has been the position of the Home Builders Association of Greater St. Louis all along, and will continue to be our position. However, it should not be done in this

fashion—by a backdoor requirement of a licensing board on licensed professionals. We do not believe that governments and others in our region will support a state licensing board trying to impose a model code that will not suit their local characteristics. Building codes are highly technical issues, outlined on hundreds of pages of text, along with amendments added by counties and municipalities to fit the code to their area. The county and municipal building departments, building commissions and elected governing bodies are in the best position to ensure that good, sound codes are developed for their counties and municipalities.

COMMENT: One (1) comment was received opposing the adoption of the most recent applicable codes as published by the International Code Conference. By the adoption of the most recent codes, the client is not required to build to this standard and for reasons of cost or convenience often choose not to do so, despite any drawing prepared by an architect. Additionally, many jurisdictions have no building department or enforcement mechanism and as such the use of an architect and any building codes, is in effect, voluntary. The determination of private entity will not be more than five hundred dollars (\$500) is very far off the mark. Buildings that comply with any code cost more than buildings that don't comply. Requiring (via the architect) that people, who are accustomed to complying with no codes now comply with stringent codes like *International Building Code (IBC) 2003* is likely to send a shock wave through rural areas. The commenter further stated that it has been a struggle to demonstrate the value of a licensed design professional and code compliance to clients who saw little value in either. It is likely that many clients, when faced with the cost and inconvenience of complying with the IBC 2003 as this rule will require, will take their business elsewhere.

COMMENT: One (1) comment was received from a registered architect opposing the rule stating it restricts designs to those codes published by the International Code Conference. There are other nationally recognized codes promulgating organizations and a designer should be permitted to design in accordance with these other codes. The commenter suggested the following change to the proposed rule.

(1) In the absence of any local building code, all buildings shall be designed in accordance with the most recent applicable Building, Residential, Existing Building, Mechanical, Electrical and Plumbing codes as published by the International Code Conference (ICC) or International Association of Plumbing and Mechanical Officials (IAPMO), or the National Fire Protection Association (NFPA). The design shall include all applicable provisions of each type of code and, except as specifically referenced by code, shall not intermix requirements from a type of code published by one (1) organization with requirements of the same type of code published by another organization. Violation of the applicable codes shall constitute incompetence in the performance of functions or duties of any profession licensed or regulated by Chapter 327 RSMo pursuant to section 327.441.2(5), RSMo.

COMMENT: One (1) comment was received from a state representative vehemently opposing the proposed rule for rural Missouri. As mayor of a rural community, something similar was implemented in the city and resulted in higher costs for owners/builders. As a result of this, non-incorporated areas will go from virtually no requirements to highly restrictive requirements, which would not only add great cost but would be a huge economic deterrent. After talking with architects in the district, several concerns were shared with the board.

1. Clients are not required to build to this standard and for reasons of cost or convenience often choose not to do so, despite any drawing prepared on the architect's part.

2. Many jurisdictions have no building department or enforcement mechanism and as such the use of an architect and any building code is, in effect, involuntary.

3. The determination of private entity will not be more than five hundred dollars is very far off the mark.

Architects in the district have struggled to demonstrate the value of

a licensed design professional and code compliance to clients who saw little value in either. Many clients, when faced with the cost and inconvenience of complying with IBC 2003 as this rule will require, will take their business elsewhere.

COMMENT: One (1) comment was received for a professional engineer stating that mining industries are regulated by the Federal Mine Safety and Health Administration (MSHA), under the United States Department of Labor. Missouri also has mine safety codes for certain mining activities and defers to MSHA on others. Federal mine safety statutes and Code of Federal Building Regulations (30 CFR Parts 1-99) set certain requirements for buildings and other structures related to mine operations. For example, 30 CFR Parts 75 and 77 adopt a portion of the *National Electrical Code (NEC)*, but has requirements that differ from NEC in other areas regarding electrical installations. The board should recognize that a building designed to meet applicable MSHA requirements may not be in compliance with other building codes. Therefore, it is recommended that the language in the proposed rule be amended to read: "In the absence of any federal regulations or local building code, all buildings shall be designed in accordance. . . ."

COMMENT: One (1) comment was received from an architect involved in developing and teaching building codes for the last thirty (30) years. The commenter heartily endorsed the rule. He has had personal experience in a rural area of Missouri where no code was adopted but significant life safety issues came up. Fortunately, the client was enlightened and the architect was never put in an uncomfortable position. This rule protects the public and the profession. The choice of the ICC family of codes is appropriate. They are being adopted throughout the country and the state. It will simplify our practice to only have one code to learn.

RESPONSE: The members of the board reviewed and discussed the above comments and felt that although it is important to have a "Standards of Care" rule, further review and study is necessary before proceeding. Therefore, they voted to withdraw the rule at this time.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

**Division 70—State Board of Chiropractic Examiners
Chapter 2—General Rules**

ORDER OF RULEMAKING

By the authority vested in the State Board of Chiropractic Medicine under sections 331.010, 331.030.5 and 331.100.2, RSMo 2000, the board amends a rule as follows:

4 CSR 70-2.031 Meridian Therapy/Acupressure/Acupuncture is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2004 (29 MoReg 711-712). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 120—State Board of Embalmers and Funeral Directors

Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Embalmers and Funeral Directors under sections 333.111 and 333.145, RSMo 2000, the board amends a rule as follows:

4 CSR 120-2.080 Written Statement of Charges **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2004 (29 MoReg 890–891). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 220—State Board of Pharmacy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Pharmacy under sections 338.060 and 338.140, RSMo 2000, the board amends a rule as follows:

4 CSR 220-2.100 Continuing Pharmacy Education **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2004 (29 MoReg 713–716). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.250, RSMo 2000, the commission rescinds a rule as follows:

4 CSR 240-3.545 Filing Requirements for Telecommunications Company Rate Schedules **is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on March 1, 2004 (29 MoReg 369). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended April 12, 2004, and the commission held a public hearing on this proposed rescission April 19, 2004. The commission's staff filed comments in support of the rescission. No comments recommended specific changes to this proposed rescission.

RESPONSE: No changes have been made to the rescission as a result of the general comments. The commission has previously found that this rule rescission is necessary to carry out the purposes of sections 386.250 and 392.220, RSMo 2000.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.250, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-3.545 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 1, 2004 (29 MoReg 369–373). 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: The written public comment period ended April 12, 2004, and the commission held a public hearing on this proposed rule on April 19, 2004. The Office of the Public Counsel filed comments and testified generally in support of the proposed rule at the public hearing. The commission's staff filed comments and Natelle Dietrich, witness for staff, testified at the public hearing generally in support of the proposed rule, with the exception of section (12). Counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri filed written comments and Jason Olson, Director Regulatory testified generally that the proposed rule was unnecessary, but continued to support SBC's written comments if the commission moves forward with the proposed rule. Eight (8) written comments specifically addressed the proposed rule. At the public hearing, Natelle Dietrich, witness for staff, responded to the specific written comments.

RESPONSE: The commission has previously found that this proposed rule is necessary to carry out the purposes of section 386.250, RSMo.

4 CSR 240-3.545(3)

COMMENT: R. Matthew Kohly, district manager of AT&T; Richard Telthorst, president of the Missouri Telecommunications Industry Association; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, filed or concurred in comments recommending changes to this section to clarify that existing tariffs need not be amended solely to comply with the rule. At the public hearing, Natelle Dietrich, witness for staff, indicated there was never an intent to require companies to completely rewrite their tariffs or to resubmit tariffs that are currently in effect. Ms. Dietrich suggested a sentence be added to section (3) as follows: Unless specifically indicated elsewhere in the rule, tariff pages or sheets in effect as of the effective date of this rule are considered in compliance with the rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission considered the comments and agrees that staff's suggested change to the proposed rule is appropriate because the intent of the rule is to provide guidance in preparing tariffs for submission to the commission, not to mandate changes to existing effective tariffs.

4 CSR 240-3.545(4)

COMMENT: Counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri filed comments objecting to the proposed rule because it would be unduly burdensome and oppressive for SBC Missouri to renumber its tariffs. At the public hearing, Natelle Dietrich, witness for staff, indicated there was never an intent to require companies to completely rewrite their tariffs or to resubmit tariffs that are currently in effect. Ms. Dietrich suggested a sentence be added to section (3) as follows: Unless specifically indicated, tariff pages or

sheets in effect as of the effective date of this rule are considered in compliance with the rule.

RESPONSE: The commission finds the change to section (3) should address SBC concerns. As previously stated, the intent of the rule is to provide guidance in preparing tariffs for submission to the commission, not to mandate changes to existing effective tariffs. No change to this section will be made as a result of the comments.

4 CSR 240-3.545(7)

COMMENT: John Idoux, Senior Manager of Sprint filed comments submitting that the "issuing officer" has designated tariff responsibilities to a qualified representative and suggests the word "officer" be changed to "company designated representative." Connie Wightman, President of Technologies Management, Inc. filed comments suggesting that when preparing and reading tariffs electronically, it is preferred to have all relevant page information at the top of the page as opposed to using footers. At the public hearing, Natelle Dietrich, witness for staff, suggested section (7) be modified to state, "The name, title and address of the issuing officer or company designated representative shall appear in the marginal space at the bottom of the sheet." Ms. Dietrich also indicated that while the Telecommunications Department did not object to the request that page information appear in either the header or the footer, the Data Center indicated to Ms. Dietrich that there are technical limitations that would need to be considered. For instance, there would need to be enough space in a header for the Data Center to enter a new effective date in event of extensions. The Data Center also has to place an electronic stamp on each tariff requiring approximately a three-quarter by three-quarter inch space. Jason Olson, Director Regulatory provided verbal testimony objecting to the suggestion of Technologies Management to resubmit tariffs with new effective dates.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comments and agrees that the suggested change to include "company designated representative" to the proposed rule is appropriate because the change will allow telecommunications providers more flexibility in preparing tariffs. However, in order to provide consistency in tariffs and avoid potential technical limitations, no changes will be made to the requirement that the name, title and address and issue and effective date appear at the bottom of the page or sheet.

4 CSR 240-3.545(8)

COMMENT: Counsel for the Office of the Public Counsel filed written comments stating that this requirement is a reasonable requirement. Counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri filed comments objecting to the proposed rule and proposed it be modified in several sections. Jason Olson, Director Regulatory testified at the public hearing that SBC proposes to add language at the beginning of section (8) as follows: "Effective with tariff filings that are filed after - and then we'll insert a date - [] tariffs for all telecommunications services shall contain the following." SBC objects to subsection (8)(B) because there is no provision to account for companies that did not get their authority to operate from the commission. SBC proposes subsection (8)(C) be modified to reflect the practice of waiving rules to companies seeking certification and competitive classification. SBC objects to subsection (8)(D) because information on rates and services is readily available on company websites or through customer service representatives. SBC objects to subsections (8)(F) and (G) because they would require SBC to make extensive changes to its existing tariffs. SBC objects to subsection (8)(H) because it would be more practical for it to list exchanges alphabetically by rate group rather than simply alphabetically.

R. Matthew Kohly, district manager of AT&T, filed comments objecting to subsection (8)(G) because the section is unlawfully reg-

ulating the marketing and advertising of intrastate telecommunications services. AT&T recommends subsection (8)(H) be limited only to tariffs for basic local exchange service. AT&T also suggests it should be allowed to list alphabetically by incumbent local exchange carrier. AT&T and Connie Wightman, President, Technologies Management, Inc., suggested that a competitive carrier be allowed to concur in the list of exchanges contained in the tariff of the incumbent.

At the public hearing, Natelle Dietrich, witness for staff, clarified that the intent of the rule was to regulate intrastate tariffs and what those tariffs look like. Ms. Dietrich supported SBC's changes to subsections (8)(B), (C), and (D). Ms. Dietrich did not support SBC's proposed change to subsection (8)(G), but instead proposed modifying the introductory paragraph of the section as follows: "Tariffs for all telecommunications services shall contain the following information and shall be updated as changes occur. For new tariffs filed after the effective date of this rule, information contained in sections (A) through (F) will appear at the beginning of the company's tariff." For subsection (8)(H), Ms. Dietrich proposed a change incorporating the written comments of multiple parties as follows: "For competitive and incumbent local exchange telecommunications carriers, a tariff shall contain an alphabetical list of the exchange area service by rate group if applicable, including state name if other than Missouri. Competitive local exchange carrier shall be permitted to provide an alphabetical list of the exchange area by incumbent local exchange carrier. Areas served with basic local exchange service must follow exchange boundaries of the incumbent local exchange telecommunications company and also must be no smaller than an exchange absent a ruling by the Commission under 392.200.2(b) RSMo 2000." Ms. Dietrich objected to the recommendation that companies be allowed to concur in the exchange list of the incumbent.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comments and agrees that the suggested changes to the proposed rule as supported by staff are appropriate because the changes will allow telecommunications providers more flexibility in preparing tariffs. The commission agrees with Ms. Dietrich, witness for staff, that companies should not be allowed to concur in the exchange list of the incumbent. By having the list of exchanges in each tariff, it is easier for the commission, staff, the Office of the Public Counsel and others to search the tariffs and clearly understand the exchanges being served by the telecommunications carrier.

4 CSR 240-3.545(9)

COMMENT: Counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri filed written comments objecting to the proposed rule to the extent it could be interpreted to require SBC to refile all its tariffs. John Idoux, Senior Manager of Sprint filed comments stating that the proposed language differs slightly from language used in Sprint tariffs. Sprint suggested alternate language. Connie Wightman, President, Technologies Management, Inc. filed comments suggesting that companies be allowed to file check sheets. At the public hearing, Ms. Dietrich, witness for staff, proposed this section be modified to address SBC and Sprint concerns. Ms. Dietrich also testified that check sheets are not used in Missouri because they are often inaccurate. Ms. Dietrich stated that it would not object if companies included check sheets in tariffs, but did not support incorporating check sheet language in the rule. Jason Olson, Director Regulatory SBC testified that the subsection should be prospective.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comments and agrees that the suggested changes staff proposed at the public hearing are appropriate because the changes will allow telecommunications providers more flexibility in preparing tariffs. The commission agrees with Ms. Dietrich,

witness for staff, that check sheets could be filed in Missouri but will not be supported by rule language.

4 CSR 240-3.545(10)

COMMENT: Connie Wightman, President, Technologies Management, Inc. filed comments suggesting this section be expanded such that "an authorized agent" be allowed to submit tariffs on a company's behalf.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered this comment and agrees that the suggested change will allow telecommunications providers more flexibility in submitting tariffs.

4 CSR 240-3.545(12)

COMMENT: Counsel for the Office of the Public Counsel filed written comments underscoring its support of the revisions to section (12), noting the rule makes specific the minimum notice items that a telecommunications company must include in the documents accompanying its tariff filings that implement changes in the terms and conditions of its services, including rate changes. R. Matthew Kohly, district manager of AT&T; Carl Lumley, counsel for MCI; Richard Telthorst, president of the Missouri Telecommunications Industry Association; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; Counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri; John Idoux, Senior Manager of Sprint; Connie Wightman, president of Technologies Management, Inc.; and the Telecommunications Department Staff filed or concurred in comments objecting to the proposed rule as difficult and burdensome and recommended several changes. At the public hearing, Michael Dandino, Counsel for OPC testified strongly in favor of the rule change stating it was substantially as Public Counsel proposed to address information missing in the present filings. Ms. Dietrich, staff witness, testified in opposition to this section as excessive and should not replace the review process that takes place when a company files tariffs. Ms. Dietrich noted the documents requested by OPC are review documents that should be available from any company upon request by Staff or OPC. Jason Olson, Director Regulatory for SBC added language not included in written comments proposing to modify the second sentence as follows: "A proposed change shall be submitted in the form of revised tariff accompanied by a cover letter. At least 10 days in advance of a tariff's effective date all telecommunications companies shall file [] a copy of any customer notice sent or required to be sent to the proposed changes." Mr. Olson also testified in support of SBC's written comments and addresses the comments of other commenters.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered these comments and finds the arguments supporting a change to this section persuasive. The purpose of this section is to outline the information to be contained in the cover letter accompanying the filing. OPC seems to be requesting additional documentation, which also may be appropriate in certain circumstances. The proposed rule will be changed as suggested in staff's written comments. An additional requirement will be added to address the need for supporting documentation for filings.

4 CSR 240-3.545(13)

COMMENT: R. Matthew Kohly, district manager of AT&T, filed comments suggesting the rule is duplicative and unnecessary. AT&T suggests companies should be permitted to use the clear and concise statement in EFIS in lieu of the cover letter. At the public hearing, staff witness, Natelle Dietrich, supported AT&T's comment and suggested the rule be modified to allow companies to use the EFIS statement in lieu of the cover letter as long as it provides all information contained in section (12).

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered this comment and finds the rule should be changed as suggested by staff witness, Natelle Dietrich, to allow companies more flexibility in making tariff filings

4 CSR 240-3.545(14)

COMMENT: Richard Telthorst, president of the Missouri Telecommunications Industry Association; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; Counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri; John Idoux, Senior Manager of Sprint filed or concurred in comments suggesting that this section be modified to allow related tariff filings impacting multiple PSC Mo. Nos. to be linked together in EFIS for commission processing and action. At the public hearing, Natelle Dietrich, staff witness, acknowledged that this request is reasonable, but explained that such a recommendation is not technically feasible in EFIS at this time. Ms. Dietrich suggested the section be modified to indicate that related tariff filings impacting multiple PSC Mo. Nos. tariffs shall be linked together when technically feasible. Jason Olson, Director Regulatory of SBC testified that SBC's proposed language is superior to the language of other parties because it makes it explicitly clear that tariff filings while filed separately are linked together.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered this comment and recognizes the companies' objections. However, as staff witness, Ms. Dietrich testified, EFIS is not currently able to accommodate such a request. The section will be modified as proposed by Ms. Dietrich so that linking will be allowed at such time as it is technically feasible.

4 CSR 240-3.545(15)

COMMENT: Counsel for the Office of the Public Counsel filed written comments supporting the customer notification requirements of this section. Carl Lumley, Counsel for MCI filed comments suggesting the cross-reference appears in error. Richard Telthorst, president of the Missouri Telecommunications Industry Association; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; Counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri; John Idoux, Senior Manager of Sprint filed or concurred in comments that a requirement that notice was sent is not always feasible. Several suggestions were proposed to allow notice to be sent in the future. R. Matthew Kohly, district manager of AT&T, filed comments suggesting the rule is duplicative and unnecessary. At the public hearing, staff witness, Natelle Dietrich, recognized the concerns of the parties, but proposed alternate language requiring a copy of the notice that was sent or will be sent to customer with a positive affirmation that the notice was sent or will be sent at least ten (10) days in advance of the rate's effective date.

RESPONSE AND EXPLANATION OF CHANGE: The commission has reviewed the comments and recognizes the cross-reference to 4 CSR 240-33.040(3) should be corrected. The commission finds the rule should also be changed as proposed by staff at the public hearing to address the companies' concerns about when customer notice is sent. The commission declines to remove language as suggested by AT&T. Section (12) refers to customer notice for any changes resulting from tariff filings. Section (15) outlines customer notification requirements specifically associated with rate increases.

4 CSR 240-3.545(16)

COMMENT: John Idoux, Senior Manager of Sprint filed comments recommending that for the introduction of new services, the companies provide the commission with seven (7) days notice. At the public hearing, staff witness, Natelle Dietrich, objected to this proposal noting that tariff filing requirements are typically dictated by statutory guidelines.

RESPONSE: The commission has considered the comments and agrees with staff witness Dietrich that statutes and rules typically require at least a thirty (30)-day tariff filing to provide notice to the commission. No changes will be made to this section based on comments received.

4 CSR 240-3.545(17)

COMMENT: Richard Telthorst, president of the Missouri Telecommunications Industry Association; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC filed or concurred in comments suggesting the section be modified to indicate that when filed in compliance with a commission order, the proposed effective date of a tariff may be less than thirty (30) days. The commenters suggest the addition would avoid the additional time and expense associated with filing a separate motion to implement on less than thirty (30) days. Jason Olson, Director Regulatory of SBC testified that SBC does not object to MCI's proposed language.

RESPONSE: Staff believes that the rules require that the effective date be thirty (30) days from the date of filing but that the commissioner has the authority to waive this requirement.

4 CSR 240-3.545(19)

COMMENT: Richard Telthorst, president of the Missouri Telecommunications Industry Association; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; John Idoux, Senior Manager of Sprint; and Counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri filed or concurred in comments suggesting the rule be modified to indicate promotions are allowed for competitive services, not competitive companies. At the public hearing staff witness, Natelle Dietrich, supported these comments and suggested "companies" be replaced with "services" each time it appears in the section. Ms. Dietrich also recommended the parenthetical reference to ILECs be removed with this change.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comments and finds the section should be modified to allow non-competitive companies with competitive services to offer promotions on those competitive services in the same manner as allowed for competitive companies.

4 CSR 240-3.545(20)

COMMENTS: Richard Telthorst, president of the Missouri Telecommunications Industry Association; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; John Idoux, Senior Manager of Sprint; and Counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri filed or concurred in comments noting that customer notice of name change should be at the company's discretion because the name change does not always rise to a change effecting customer recognition of the service provider. At the public hearing Natelle Dietrich, staff witness, suggested the last sentence of the section be modified to require customer notification for any name change affecting customer recognition of the company. Jason Olson, Director Regulatory of SBC testified that SBC supports the comments of Sprint and MCI.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comments and finds the section should be modified as proposed by staff. The modification would allow the company discretion in sending customer notification, but would also allow the commission, staff and the Office of the Public Counsel to request customer notification if there is a discrepancy in what is considered "customer recognition."

4 CSR 240-3.545(22)

COMMENTS: Counsel for the Office of the Public Counsel filed general comments on this section. Connie Wightman, president of

Technologies Management, Inc. filed a comment recommending the rule be revised to accommodate different contacts for different operational areas. At the public hearing, staff witness, Natelle Dietrich, noted EFIS already provides a source for inputting various company contacts. The rule requires the company to provide the Telecommunications Department with a regulatory contact, realizing that additional contacts could be found in EFIS if needed.

4 CSR 240-3.545 Filing Requirements for Telecommunications Company Tariffs

(3) A tariff will be considered as continuing in force until amended in the manner provided for in this rule. Unless specifically indicated in another section of this rule, tariff pages or sheets in effect as of the effective date of this rule are considered in compliance with the rule.

(7) The name, title and address of the issuing officer or company-designated representative shall appear in the marginal space at the bottom of the sheet. The marginal space at the bottom of the sheet shall also include the notation "Issued, ____ 20 ____; effective, ____ 20 ____".

(8) Tariffs for all telecommunications services shall contain the following information and shall be updated as changes occur. For new tariffs filed after the effective date of this rule, information contained in subsections (8)(A) through (F) will appear at the beginning of the company's tariff.

(B) If applicable, certification authority granted by the commission, including case number(s);

(C) Waivers of Missouri Statutes and Commission Rules as granted by the commission in connection with certification to provide service. Include case number(s) if other than case number(s) listed in subsection (8)(B);

(D) The address, telephone number and website or e-mail address, along with any other suitable means of communications, to which the general public can make requests for information on rates and services;

(G) For each service, tariffs shall provide the following:

1. The name of the service, which clearly identifies the regulated intrastate offering, as it will be advertised and offered to the customer. Any service name that references a rate will accurately reflect the applicable intrastate rate(s) for the service;

2. A detailed description of the service offered;

3. The specific rates and charges in U.S. dollars and the period of time covered by the rate or charge; and

4. Any terms and customer requirements that affect the rates or charges for the service.

(H) For competitive and incumbent local exchange telecommunications carriers, a tariff shall contain an alphabetical list of the exchange area service by rate group if applicable, including state name if other than Missouri. Competitive local exchange carrier shall be permitted to provide an alphabetical list of the exchange area by incumbent local exchange carrier. Areas served with basic local exchange service must follow exchange boundaries of the incumbent local exchange telecommunications company and also must be no smaller than an exchange absent a ruling by the commission under section 392.200.2(b), RSMo 2000.

(9) All new tariffs or all new pages added to tariffs shall be designated as an original sheet (page). All changes to tariffs must be designated substantially as follows: "First revised sheet (page) canceling (cancels, replaces) original sheet," "Second revised sheet (page) canceling (cancels, replaces) first revised sheet (page)," etc. and must contain reference marks denoting changes.

(10) A tariff shall be filed with the commission by a duly-designated official or an authorized agent of the telecommunications company.

(12) Subject to *Missouri Revised Statutes* and commission rules, all telecommunications companies shall file with the commission any changes in rates, charges or rules that affect rates or charges. A proposed change shall be submitted in the form of a revised tariff accompanied by a cover letter and a copy of any customer notice sent or required to be sent as a result of the proposed change. The cover letter should be limited to approximately one hundred (100) words or less. A copy of the cover letter and any proposed change shall be filed with the commission or submitted electronically through the commission's electronic filing and information system (EFIS), shall be served on the Office of the Public Counsel. A copy of the proposed change(s) shall be made available for public inspection and reproduction at the company's principal operating office or on its website. The cover letter shall identify each proposed change, provide a brief summary of each proposed change, and provide the requested effective date of the revised tariff. The summary shall identify each product, service, or category of services that will be affected by the proposed change and shall identify the change in the terms and conditions that the company proposes for that product, service, or category of services including any change or adjustment in the price or fee for that product or service. Upon request by commission staff or the Office of the Public Counsel, a telecommunications company shall provide supporting documentation for each change or adjustment in prices or fees. A request for supporting documentation shall be made within five (5) business days of the filing and responses shall be provided within five (5) business days of receipt of the request for supporting documentation. The documentation shall identify:

- (A) The current price or fee;
- (B) The proposed price or fee;
- (C) Whether the change or adjustment results in an increase or decrease in price; and
- (D) The percentage change in price.

(13) All telecommunications companies are required to provide a clear and concise statement as to the purpose of the filing when submitting any tariff filing electronically through EFIS. This statement may be in lieu of the cover letter required in 4 CSR 240-3.545(12) providing it contains all the information required of cover letters as outlined in 4 CSR 240-3.545(12). This statement shall be entered on the appropriate EFIS tariff submission screen.

(14) All telecommunications companies are required to submit revisions to each PSC Mo. No. as a separate filing to be assigned a separate tracking number in EFIS. Related tariff filings impacting multiple PSC Mo. No. tariffs shall be linked together, when technically feasible.

(15) All telecommunications companies are required to submit to the commission with the tariff filing, a copy of the notification of rate increases that was sent or will be sent to customers pursuant to 4 CSR 240-33.040(4) and a positive affirmation in writing that the notice was sent or will be sent to customers at least ten (10) days in advance of the rate's effective date.

(19) Promotions are those service offerings that provide a reduction or waiver of a tariffed rate for a limited period of time. Promotions are allowed to go into effect after seven (7) days prior notice to the commission for competitive services and after ten (10) days prior notice to the commission for noncompetitive services. Promotions must be offered under tariff, and prior notification to the commission via a tariff filing is required. Promotions must have established start and end dates and must be offered in a nondiscriminatory manner.

(20) In the case of a change of name, the telecommunications company shall issue immediately and file with the commission an adoption notice substantially as follows: "The (name of telecommunications company) hereby adopts, ratifies and makes its own, in every respect as if the same had been originally filed by it, all tariffs filed with the Public Service Commission, State of Missouri, by the (name of telecommunications company) prior to (date) or the telecommunications company shall file a new tariff under the new name." Specific requirements for filings regarding company name changes are contained in Chapter 2 of the commission's rules in rule 4 CSR 240-2.060. In addition to filing the items in 4 CSR 240-2.060, applicant must notify its customers at or before the next billing cycle of any name change affecting customer recognition of the company and file a copy of that notice with the adoption notice.

(22) Within six (6) months of the effective date of the rule, all telecommunications companies shall update the commission's electronic filing system with the current name, address, telephone number and e-mail address for the regulatory contact person within the telecommunications company. This information shall be updated in the electronic filing system within ten (10) business days of when changes occur.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.250, RSMo 2000, the commission amends a rule as follows:

**4 CSR 240-3.555 Telecommunications Company Residential
Customer Inquiries is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2004 (29 MoReg 374). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended March 30, 2004, and the commission held a public hearing on this proposed amendment April 23, 2004. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the amendment. Michael Dandino of the Office of the Public Counsel also testified generally in support of the amendment at the public hearing. Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, testified generally that the proposed amendment was unnecessary. No comments recommended specific changes to this proposed amendment.

RESPONSE: No changes have been made to the amendment as a result of the general comments. The commission has previously found that this rule amendment is necessary to carry out the purposes of sections 386.040, 386.250, 392.200 and 392.540, RSMo.

COMMENT: Michael Dandino of the Office of the Public Counsel testified that the rules should be expanded to apply to small businesses and suggested limiting the definition of small business customer to businesses with fewer than ten (10) employees.

RESPONSE: This would require a change to the definition of "customer," and has a significant impact on all rules within this chapter, including rules not raised in this rulemaking proceeding. No fiscal analysis has been performed on this proposal. Such an amendment

is beyond the scope of this proceeding and would require consideration of such topics as how to determine "employee" status (e.g., full-time, part-time, independent contractor); how to address fluctuating numbers of employees; corporate versus partnership status vis-à-vis employee status; whether to consider the number of employees at a particular location or company-wide; determining who shall determine small business status (self-reporting, auditing, monitoring). Other definitions may be possible. No changes will be made as a result of this comment.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission Chapter 32—Telecommunications Service

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040 and 386.250, RSMo 2000 and 392.200, RSMo Supp. 2003, the commission adopts a rule as follows:

4 CSR 240-32.200 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2004 (29 MoReg 646-650). 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 May 26, 2004, and the public comment period ended May 17, 2004. At the public hearing, Natelle Dietrich, Regulatory Economist III with the Public Service Commission, provided oral responses to written and oral comments. In addition, orally at the public hearing, Mark Comley, attorney at law, provided comments for Heart of America United Way, Inc.; Sara Parker, State Librarian, provided comments for the State Library; and Paul Lane, attorney at law, provided comments for Southwestern Bell Telephone, LP, d/b/a SBC Missouri.

The staff of the Public Service Commission, Heart of America United Way, Inc., Southwestern Bell Telephone, LP, d/b/a SBC Missouri, and AT&T Communications of the Southwest, Inc., (AT&T) filed written comments.

COMMENT: The staff of the Public Service Commission supports the adoption of the proposed rule in its entirety.

RESPONSE: No changes have been made to the rule as a result of this comment.

COMMENT: Heart of America United Way, Inc., notes that although subsection (2)(C) directs a telecommunications company to submit a 211 tariff to the commission when it receives a request from an entity to use 211 as the Information and Referral (I&R) Provider, the subsection does not set a time limit within which a telecommunications company must submit a tariff. Heart of America United Way, Inc., suggests a thirty (30)-day time limit. At the public hearing, the staff noted that some companies would have to complete tariffs on a national basis and that other companies would have no experience in developing 211 tariffs. The staff suggested that sixty (60) days is an appropriate time limit. At the public hearing, SBC Missouri responded that a sixty (60)-day time limit to prepare a 211 tariff is acceptable.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees, that to prevent an unnecessary delay in implementing 211 service, that a telecommunications company should have a time limit to submit a 211 tariff after it receives a request from an entity to use 211 as the I&R Provider. The commission agrees that sixty (60) days is a reasonable period for a telecommunications company

to prepare and submit a proposed 211 tariff. Section (2) of the rule will be changed.

COMMENT: AT&T and SBC Missouri suggest that subsection (2)(D) inappropriately places the burden on the telecommunications company to determine whether the entity requesting 211 service is an authorized I&R Provider in Missouri. At the public hearing, the staff stated it would support a change to require the entity requesting 211 service to provide the telecommunications company a copy of its application to become a Missouri I&R Provider or a copy of the order granting it authority as a Missouri I&R Provider.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that the entity requesting 211 service from a telecommunications company should provide the telecommunications company with documentation showing that the entity has obtained or is seeking authorization as a Missouri I&R Provider. Section (2) of the rule will be changed.

COMMENT: SBC Missouri objects to the use of the word "use" in section (2) because the I&R Provider would request that it "be assigned" the 211 code. SBC Missouri states that it could ensure that entities that were previously "assigned" 211 would relinquish the code, but that it does not know whether any entity was actually using the 211 code. At the public hearing, the staff pointed out that the word "use" is language from the Federal Communication Commission's 211 order, but that the staff did not object to replacing "use" with "assign."

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that the potential that an entity that has been assigned the 211 code is not using the 211 code creates an ambiguity in the rule. Section (2) of the rule will be changed.

COMMENT: SBC Missouri seeks clarification with regard to the reference in subsection (2)(C) to section 392.220(3), RSMo. This statute authorizes a telecommunications company to give free or reduced service to, among others, corporations exclusively engaged in charitable and eleemosynary work and to public libraries. At the public hearing, the staff noted that the statute applies regardless of whether or not it is referenced in the rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that the statute applies without referencing it in the rule. Section (2) of the rule will be changed.

COMMENT: SBC Missouri suggests that subsection (4)(B) should be amended to provide for the commission to notify incumbent local exchange companies and facilities based local exchange companies and other organizations that an applicant has become a Missouri I&R Provider. At the public hearing, SBC Missouri said the issue of whether this notice should be provided would tie to how the commission deals with the question of when the tariff should be filed.

RESPONSE: The commission is changing section (2) to require the entity requesting 211 service to provide the telecommunications company a copy of its application to become a Missouri I&R Provider or a copy of the order granting it such authority. The commission is also changing section (2) to set a sixty (60)-day time limit for a telecommunications company to prepare and submit a 211 tariff after receiving a request for 211 service. No changes have been made to the rule as a result of this comment.

COMMENT: SBC Missouri objects to the use of the word "use" in section (7) because the I&R Provider would request that it "be assigned" the 211 code. SBC Missouri states that it could ensure that entities that were previously "assigned" 211 would relinquish the code, but that it does not know whether any entity was actually using the 211 code. At the public hearing, the staff pointed out that the word "use" is language from the Federal Communication Commission's 211 order, but that the staff did not object to replacing "use" with "assign."

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that the potential that an entity that has been assigned the 211 code is not using the 211 code creates an ambiguity in the rule. Section (7) of the rule will be changed.

COMMENT: SBC Missouri seeks clarification of section (13) which provides: "Neither a telephone company nor a Missouri I&R Provider shall charge end users for 211 service." SBC Missouri is concerned that a telephone company would be unable to bill an end user who calls from a payphone or who purchases local measured service. At the public hearing, the staff agreed that the language could lead to confusion.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that someone might read the rule as prohibiting a telephone company from charging for a payphone call to 211 or a local measured service call to 211. The intent is that the end user is not to be charged an additional 211 service charge. Section (13) of the rule will be changed.

COMMENT: At the public hearing, the State Librarian expressed concern that the rule limits Missouri I&R Providers to not-for-profit organizations as defined in the federal tax code. The State Librarian explained that libraries have a long history of answering public inquiries and a long history of maintaining community information files. The State Librarian added that units of local government, and government generally, often have funding mechanisms to give stability and resources for continuity of programs. At the public hearing, the staff explained that the purpose in limiting Missouri I&R Providers to not-for-profit organizations was to address the concern that the I&R Provider might tie up the 211 number for purposes not related to providing 211 service. The staff was amenable to allowing a government entity to apply to be a Missouri I&R Provider.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that government entities may possess the funding and expertise to operate as a Missouri I&R Provider. Section (3) of the rule will be changed.

4 CSR 240-32.200 General Provisions for the Assignment, Provision and Termination of 211 Service

(2) An entity requesting 211 service from a telecommunications company shall provide the telecommunications company with a copy of the order granting it authority as a Missouri I&R Provider or a copy of its application to become a Missouri I&R Provider supplemented by a copy of the order granting it authority as a Missouri I&R Provider prior to beginning service. When a telecommunications company receives a request from an entity to be assigned 211 as the Information and Referral Provider for a geographic area, the telecommunications company shall:

(A) Ensure that any entities that were assigned 211 at the local level prior to July 31, 2000, relinquish assignment of the code for noncompliant services;

(B) Take steps necessary (such as reprogramming switch software) to complete 211 calls from its subscribers to the Information and Referral Provider;

(C) Within sixty (60) days, submit a tariff to the commission, if no tariff exists, incorporating rates, terms and conditions for 211 service.

(3) Entities interested in becoming a Missouri I&R Provider shall file an application with the commission.

(A) All applications shall include a statement that the application meet the following criteria:

1. Applications must comply with 4 CSR 240-2.060(1);

2. A statement that the applicant is a not-for-profit organization as defined by section 501(c)(3) of the federal tax code or is a county, municipality, political subdivision, or agency of the state of Missouri;

3. A statement that the 211 telephone line will be monitored twenty-four (24) hours a day, seven (7) days a week, by:

A. The applicant's personnel;

B. The personnel of another Missouri I&R Provider under subcontract with the applicant; or

C. The personnel of a qualified human services entity under subcontract with the applicant;

4. The 211 telephone line shall not be answered through an answering service or answering machine;

5. Will adhere to the Alliance of Information and Referral Systems, Incorporated *Standards for Professional Information and Referral*, 4th edition, revised October 2002, which is incorporated herein by reference, and is AIRS accredited, or has initiated, or will initiate, the written application process and shall become accredited within three (3) years;

6. Offers comprehensive services pursuant to the AIRS standards;

7. Shares resource database information with other Missouri I&R Providers;

8. Works collaboratively and has written agreements with specialized information and referral systems which shall include crisis centers, child care resource and referral programs, elderly help-lines, homeless coalitions, designated emergency management systems, 911 and 311 systems, as applicable;

9. Uses a method common to all Missouri I&R Providers to measure and evaluate outcomes for the operation of a 211 call center;

10. Has an established automated information tracking system that maintains call center data that shall include the following statistics: call volume, number of abandoned calls, average speed of answering, and average call length;

11. Tracks information on inquirer needs, unmet needs, and barriers to services and shares this data with other Missouri I&R Providers, and local and state organizations;

12. Removes or excludes human services entities from the Missouri I&R Providers' database for failure to deliver service, fraud, misrepresentation and discrimination;

13. Maintains a computerized information and referral database that has up-to-date information and resource data and the capacity to collect caller information;

14. Ensures quality of service and caller and customer satisfaction through follow-up and written outcome evaluations;

15. Publicizes 211 services through a written public awareness, marketing, advertising, and education plan to inform the public regarding available services;

16. Provides teletype (TTY) services for speech and hearing impaired individuals and multi-lingual accessibility either on-site, or through access to translators; and

17. Has formal agreements with clearinghouse agencies that provide volunteer or donation management services.

(7) A Missouri I&R Provider will be entitled to be assigned the three (3)-digit 211 abbreviated dialing code to serve the community for a period of three (3) years.

(13) Neither a telecommunications company nor a Missouri I&R provider shall charge end users a separate charge specifically for 211 service.

**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 386.040 and 386.250, RSMo 2000 and 392.200, RSMo Supp. 2003, the commission amends a rule as follows:

4 CSR 240-33.010 General Provisions is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2004 (29 MoReg 374). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended March 30, 2004, and the commission held a public hearing on this proposed amendment April 23, 2004. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the amendment. Michael Dandino of the Office of the Public Counsel also testified generally in support of the amendment at the public hearing. Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, testified generally that the proposed amendment was unnecessary. No comments recommended specific changes to this proposed amendment.

RESPONSE: No changes have been made to the amendment as a result of the general comments. The commission has previously found that this rule amendment is necessary to carry out the purposes of sections 386.040, 386.250, 392.200 and 392.540, RSMo.

COMMENT: Michael Dandino of the Office of the Public Counsel testified that the rules should be expanded to apply to small businesses and suggested limiting the definition of small business customer to businesses with fewer than ten (10) employees.

RESPONSE: This would require a change to the definition of "customer," and has a significant impact on all rules within this chapter, including rules not raised in this rulemaking proceeding. No fiscal analysis has been performed on this proposal. Such an amendment is beyond the scope of this proceeding and would require consideration of such topics as how to determine "employee" status (e.g., full-time, part-time, independent contractor); how to address fluctuating numbers of employees; corporate versus partnership status vis-à-vis employee status; whether to consider the number of employees at a particular location or company-wide; determining who shall determine small business status (self-reporting, auditing, monitoring). Other definitions may be possible. No changes will be made as a result of this comment.

**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 386.040 and 386.250, RSMo 2000 and 392.200, RSMo Supp. 2003, the commission amends a rule as follows:

4 CSR 240-33.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2004 (29 MoReg 374-375). 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: The written public comment period ended March 30, 2004, and the commission held a public hearing on

this proposed amendment April 23, 2004. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the amendment. Michael Dandino of the Office of the Public Counsel also testified generally in support of the amendment at the public hearing. Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, testified generally that the proposed amendment was unnecessary. Five (5) written comments specifically addressed the proposed amendment. At the public hearing, Natelle Dietrich of the commission's staff responded to the specific written comments and Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, provided specific comments in addition to her written comments on the proposed amendment.

RESPONSE: The commission has previously found that this rule amendment is necessary to carry out the purposes of sections 386.040, 386.250, 392.200 and 392.540, RSMo.

COMMENT: Carl Lumley, counsel for MCI; Richard Telthorst, president of the Missouri Telecommunications Industry Association; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, filed or concurred in comments recommending the deletion of the requirement that customers be "unidentifiable" from the proposed language of sections (7) and (31) of the rule. MCI recommended the deletion because some customers covered by the definitions may be identifiable, but should still be included within the definitions.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comments and agrees that the suggested change to the proposed amendment is appropriate, because customers using dial-around patterns may be identifiable, but still fall within the defined group of "casual calling customers" or "transient customers."

COMMENT: Mimi MacDonald, counsel for SBC Missouri, filed a written comment and testified at the public hearing that the proper way to identify the calling pattern referenced in proposed section (7) should be "101-XXXX" rather than "10-10-XXX." At the public hearing, Natelle Dietrich of the commission's staff indicated that the staff was not familiar with the 101-XXXX calling pattern, and recommended the rule not be changed unless further information was provided. SBC then testified that the four (4) Xs represent the carrier identification code.

RESPONSE AND EXPLANATION OF CHANGE: The commission will modify this section to include a reference to both dialing patterns, as the references are used simply as an example, without limitation. "10-10-XXX" is actually a subset of the dialing pattern "101-XXXX." The latter pattern may be more technically accurate, but the former pattern is the more widely known and understood reference.

COMMENT: Michael Dandino of the Office of the Public Counsel testified that the rules should be expanded to apply to small businesses and suggested limiting the definition of small business customer to businesses with fewer than ten (10) employees.

RESPONSE: This would require a change to the definition of "customer," and has a significant impact on all rules within this chapter, including rules not raised in this rulemaking proceeding. No fiscal analysis has been performed on this proposal. Such an amendment is beyond the scope of this proceeding and would require consideration of such topics as how to determine "employee" status (e.g., full-time, part-time, independent contractor); how to address fluctuating numbers of employees; corporate versus partnership status vis-à-vis employee status; whether to consider the number of employees at a particular location or company-wide; determining who shall determine small business status (self-reporting, auditing, monitoring). Other definitions may be possible. No changes will be made as a result of this comment.

4 CSR 240-33.020 Definitions

(7) Casual calling customer is a customer that accesses the telephone network by a dial around pattern such as 10-10-XXX or 101-XXXX.

(31) Transient customer is a customer that accesses telecommunications services through the use of a traffic aggregator such as pay-phones or hotels.

**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 section 386.250, RSMo 2000, the commission rescinds a rule as follows:

4 CSR 240-33.030 Minimum Charges Rule is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on March 1, 2004 (29 MoReg 375-376). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended March 30, 2004 and the commission held a public hearing on this proposed rescission April 23, 2004. Natelle Dietrich of the commission's staff filed a comment in support of the rescission.

RESPONSE: No changes have been made to the rescission as a result of the staff's general endorsement.

**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 386.040 and 386.250, RSMo 2000 and 392.200, RSMo Supp. 2003, the commission amends a rule as follows:

4 CSR 240-33.040 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2004 (29 MoReg 376-377). 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: The written public comment period ended March 30, 2004, and the commission held a public hearing on this proposed amendment April 23, 2004. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the amendment. Michael Dandino of the Office of the Public Counsel also testified generally in support of the amendment at the public hearing. Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, testified generally that the proposed amendment was unnecessary. Seven (7) written comments specifically addressed the proposed amendment.

At the public hearing, Natelle Dietrich of the commission's staff and Michael Dandino of the Office of the Public Counsel responded to the specific written comments and Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, provided specific comments in addition to her written comments on the proposed amendment.

RESPONSE: The commission has previously found that this rule amendment is necessary to carry out the purposes of sections 386.040, 386.250, 392.200 and 392.540, RSMo.

COMMENT: Carl Lumley, counsel for MCI; Richard Telthorst, president of the Missouri Telecommunications Industry Association; John Idoux, senior manager, Sprint; Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri; R. Matthew Kohly, state director, government affairs, AT&T; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, filed or concurred in comments recommending the addition of electronic mail to section (4) as an acceptable form of customer notice. At the public hearing, SBC Missouri clarified it intended the addition of the words "electronic communication" and that it preferred that term to "electronic mail." Also at the public hearing, the commission's staff stated that the staff had no objection to this additional form of customer notice as long as the customer had previously authorized electronic notification.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comments and agrees that the addition of "electronic communication" to the list of acceptable forms of customer notice is appropriate for customers who have previously authorized electronic notification.

COMMENT: R. Matthew Kohly, state director, government affairs, AT&T, filed a written comment that the proposed requirement in section (4) to notify all presubscribed customers of an increase in rates for any service available to a presubscribed customer is overly broad and unnecessarily burdensome. At the public hearing, SBC Missouri agreed with this position. Natelle Dietrich of the commission's staff and Michael Dandino of the Office of the Public Counsel testified that they disagreed with the suggestion that the proposed requirement was overly broad and unnecessarily burdensome. Natelle Dietrich of the commission's staff testified that the proposed rule codified the current commission practice of requiring customer notice to all presubscribed customers on all presubscribed services of rate increases. Michael Dandino of the Office of the Public Counsel testified that presubscribed customers should receive notice of all rate changes because by presubscribing to a company, there is a higher likelihood the customer will use that company for other telecommunications services.

RESPONSE: The commission finds that the requirement to notify presubscribed customers of rate increases in writing is not overly broad and unnecessarily burdensome, and declines to incorporate the suggested modifications. Residential customers should receive notice when presubscribed service rates increase, and section 392.500(2) RSMo, also calls for this type of customer notice.

COMMENT: Michael Dandino of the Office of the Public Counsel testified that the rules should be expanded to apply to small businesses and suggested limiting the definition of small business customer to businesses with fewer than ten (10) employees.

RESPONSE: This would require a change to the definition of "customer," and has a significant impact on all rules within this chapter, including rules not raised in this rulemaking proceeding. No fiscal analysis has been performed on this proposal. Such an amendment is beyond the scope of this proceeding and would require consideration of such topics as how to determine "employee" status (e.g., full-time, part-time, independent contractor); how to address fluctuating numbers of employees; corporate versus partnership status vis-à-vis employee status; whether to consider the number of employees at a

particular location or company-wide; determining who shall determine small business status (self-reporting, auditing, monitoring). Other definitions may be possible. No changes will be made as a result of this comment.

4 CSR 240-33.040 Billing and Payment Practices for Residential Customers

(4) A company proposing to increase rates for a regulated telecommunications service must provide at least ten (10) days advance written notice, or thirty (30) days advance written notice in the case of a small telephone company as defined in section 392.230.5, RSMo, to affected customers with whom the company has an on-going business relationship. This requirement includes written notification to a pre-subscribed customer if a company proposes to increase rates for any service available to the pre-subscribed customer. Increases in billing increments are considered rate increases and are subject to section 392.500, RSMo. Written notification must be provided to the pre-subscribed customer for services available to that pre-subscribed customer but billed to another party such as collect calls or calls billed to a third number. Bill inserts, bill messages, electronic communications to customers that have authorized receipt of electronic notification, and direct mailings are acceptable forms of customer notice. Written notification is not required if the affected service with the proposed rate increase regularly announces the applicable rate prior to each time the customer uses the service. Written notification is also not required if the affected service is solely provided to the transient or casual calling customer.

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 386.040 and 386.250, RSMo 2000 and 392.200, RSMo Supp. 2003, the commission amends a rule as follows:

4 CSR 240-33.060 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2004 (29 MoReg 377-380). 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: The written public comment period ended March 30, 2004, and the commission held a public hearing on this proposed amendment April 23, 2004. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the amendment. Michael Dandino of the Office of the Public Counsel also testified generally in support of the amendment at the public hearing. Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, testified generally that the proposed amendment was unnecessary. Eight (8) written comments specifically addressed the proposed amendment. At the public hearing, Natelle Dietrich of the commission's staff and Michael Dandino of the Office of the Public Counsel responded to the specific written comments and Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, provided specific comments in addition to her written comments on the proposed amendment.

RESPONSE: The commission has previously found that this rule amendment is necessary to carry out the purposes of sections

386.040, 386.250, 392.200 and 392.540, RSMo.

COMMENT: Carl Lumley, counsel for MCI; Richard Telthorst, president of the Missouri Telecommunications Industry Association; John Idoux, senior manager, Sprint; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, filed or concurred in comments recommending the deletion of section (1) because they suggest it is redundant of a similar provision at 4 CSR 240-33.040(8)(K). At the public hearing, Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, agreed with this comment. Natelle Dietrich of the commission staff testified that the staff disagreed, because local carriers may bill on behalf of other carriers and would not be the proper party to receive billing questions. In its written comments, staff recommended the replacement of the word "the" with "each" before the reference to a toll free number for calling because multiple carriers may be referenced on a bill but each may have its own toll free number.

RESPONSE AND EXPLANATION OF CHANGE: The commission will change the proposed language in section (1) to replace the words "the" and "inquiries" with "each" and "disputes" as recommended by commission staff. The rule is not redundant of another commission rule, because it contains the requirement that a company name be associated with the toll free number for customer use; this is distinct from the requirement elsewhere in commission rules that a bill simply contain a toll free number. Thus, the commission will not delete section (1) in its entirety.

COMMENT: Representatives of MCI, the Missouri Telecommunications Industry Association, Sprint, and CenturyTel filed or concurred in comments requesting the commission clarify section (3) to make it clear the listed restrictions are to be implemented by the basic local telecommunications carrier, and also to reference only direct-dialed numbers. SBC Missouri filed written comments in support of this modification. Carl Lumley also notes that blocking capabilities in general referenced in sections (3)-(6) reside in the local service switch or the customers' PBX equipment. At the public hearing, SBC Missouri and Natelle Dietrich of the commission's staff stated they did not object to the addition of a reference to local exchange carriers.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds proposed section (3) should be changed to refer to local exchange telecommunications carriers and direct-dialed (i.e., 1+ dialed) numbers as recommended in comments received.

COMMENT: Representatives of MCI, the Missouri Telecommunications Industry Association, Sprint, and CenturyTel filed or concurred in comments requesting the commission clarify section (4) to limit the restricted service to inmate-calling or payphone services, in lieu of the general reference to services from state correctional facilities; and also insert a reference to technical feasibility. At the public hearing, Natelle Dietrich of the commission's staff indicated the staff had no objection to these modifications. SBC Missouri indicated a reference to inmate-calling services would be more accurate than a reference to payphone services and also recommended a reference to technical feasibility and requested clarification that restrictions should not apply to administrative lines.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds proposed section (4) should be changed to clarify that restrictions should only apply to inmate-calling services, and will insert a reference to technical feasibility.

COMMENT: MCI requested a reference to technical feasibility in proposed section (5), because MCI does not have the technical ability to block toll calls but permit access to the toll network via a pass-code. The commission inserted a similar reference in section (6). At the public hearing, Natelle Dietrich of the commission's staff indicated the staff had no objection to this modification.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds proposed section (5) should be changed to include a reference to technical feasibility to accommodate this concern.

COMMENT: SBC Missouri filed a written comment and testified at the public hearing that the reference in section (6) to the “10-10-XXX” dialing pattern would more accurately be to the “101-XXXX” dialing pattern. At the public hearing, Natelle Dietrich of the commission’s staff indicated that staff was not familiar with the 101-XXXX calling pattern, and it recommended the rule not be changed unless further information was provided. Counsel for SBC Missouri then testified that the four (4) Xs represent the carrier identification code.

RESPONSE AND EXPLANATION OF CHANGE: The commission will modify this section to include a reference to both dialing patterns. “10-10-XXX” is actually a subset of the dialing pattern “101-XXXX.” The latter pattern may be more technically accurate, but the former pattern is the more widely known and understood reference.

COMMENT: R. Matthew Kohly, state director, governmental affairs, AT&T, filed written comments suggesting customers should be able to verbally request the calling restrictions in sections (3)–(6). At the public hearing, Natelle Dietrich of the commission’s staff testified that the company receiving the request would have a record if the request were made in writing, and recommended that sections remain unchanged. SBC Missouri and Sprint representatives also testified that they agreed with AT&T’s suggestion. Sprint noted that if a customer makes a verbal request, verification is still required and the company will document the request.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that requests for restrictions in sections (3)–(6) of the rule may be made verbally. Witnesses for Sprint, AT&T and SBC Missouri indicated their support of this modification, and Sprint discussed the safeguards it has to compensate for a lack of written documentation. The Sprint witness indicated Sprint and the industry were not prepared to handle the potentially numerous paper requests. The commission finds this testimony convincing and will modify the proposed rules accordingly.

COMMENT: SBC Missouri filed a written comment objecting to the requirement in sections (3) and (4) that the telecommunications carrier provide the listed restrictions at no cost to the customer requesting the restriction. The SBC Missouri representative also testified at the public hearing that although SBC Missouri does not currently charge for these restrictions, the commission should not impose a new requirement on companies without allowing for cost recovery. Natelle Dietrich of the commission’s staff testified at the public hearing that the commission had previously considered this issue, and that at an industry workshop some local carriers were concerned that imposing a charge on customers could be single-issue ratemaking. Michael Dandino of the Office of the Public Counsel testified at the public hearing that it supported no charge for 900 blocking or toll restrictions, because charges would be impediments to that service and the expenses are already built into cost recovery.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered this issue and determined that companies that have the statutory authority to recover their costs may do so. The commission will remove the language “at no cost to that consumer” in sections (3) and (4).

COMMENT: Representatives of MCI, the Missouri Telecomm-

unications Industry Association, Sprint, AT&T, CenturyTel, SBC Missouri, and the commission staff all filed written comments recommending modifications to section (7) to clarify that telecommunications companies need not notify customers of their rights in sections (3)–(6) during the initial telephone call to set up service, and notify customers again of those rights each time unordered services of any nature appear on a customer’s bill. SBC Missouri indicated that if the rule were construed to require these communications, it would have a substantial fiscal impact.

RESPONSE AND EXPLANATION OF CHANGE: The commission will modify the language of section (7) to clarify that companies need not review the rights in sections (3)–(6) in the initial telephone call from a new customer but may provide notice through an initial written contact, and limit subsequent reviews of those rights to situations where unauthorized charges related to the types of services discussed in sections (3)–(6) appear on a customer’s bill. For instance, if a customer inquires about calls from correctional facilities, the company need only inform the customer of their rights relating to correctional facility blocking. These modifications should resolve concerns expressed by commenters that the amended rule would have a significant fiscal impact.

COMMENT: AT&T filed written comments objecting to the requirement in section (7) that annual notification of the rights in sections (3)–(6) be made through bill insert or statements on customer bills, because it is more effective to provide the information through listings in the local directory than through multiple direct mailings.

RESPONSE: The commission will not eliminate the option that notice may be provided by bill insert or statement on customer bills. These methods of communication are reasonable methods of communicating with customers and service providers still have the option of providing the communication through telephone directory listings.

COMMENT: AT&T filed written comments suggesting that if multiple telecommunications companies seek to carry out their obligations under section (7) by notifying customers of the rights in sections (3)–(6) by placing their notices in the same telephone directory, the information need only appear once. The SBC Missouri representative testified at the public hearing that it opposed AT&T’s suggestion because each telecommunications company should determine how to communicate with its own customers, because a single message would blur the distinction between companies, because it would not be clear who would bear the cost of the listing, and because companies may differ on what they would like the message to include. Natelle Dietrich of the commission’s staff testified at the public hearing that it had no objection to modifying section (7) to limit local directory information to one appearance rather than listing the rights with each telecommunications carrier’s listing.

RESPONSE: The commission will not modify the language of section (7) to add the sentence, “If multiple telecommunications companies are represented in a telephone directory, the information need only appear once.” SBC Missouri’s points in response have validity. Moreover, a telephone directory listing is one of a number of options service providers have to communicate with their customers.

COMMENT: Michael Dandino of the Office of the Public Counsel testified that the rules should be expanded to apply to small businesses and suggested limiting the definition of small business customer to businesses with fewer than ten (10) employees.

RESPONSE: This would require a change to the definition of “customer,” and has a significant impact on all rules within this chapter, including rules not raised in this rulemaking proceeding. No fiscal analysis has been performed on this proposal. Such an amendment is beyond the scope of this proceeding and would require consideration of such topics as how to determine “employee” status (e.g., full-time, part-time, independent contractor); how to address fluctuating numbers of employees; corporate versus partnership status vis-a-vis employee status; whether to consider the number of employees at a

particular location or company-wide; determining who shall determine small business status (self-reporting, auditing, monitoring). Other definitions may be possible. No changes will be made as a result of this comment.

4 CSR 240-33.060 Residential Customer Inquiries

(1) All bills shall clearly identify each company name associated with each toll free number the customers will be calling for billing inquiries and/or to cancel their previously granted consent to certain services that will be charged on the telephone bill.

(3) Upon request of a customer by verbal request, by electronic communications or by writing, all local telecommunications carriers shall restrict all direct dialed (i.e. 1+ dialed) 900 numbers from that customer's number.

(4) Upon request of a customer by verbal request, by electronic communications or by writing, the telecommunications carrier providing inmate calling service to state correctional facilities shall restrict all calls from inmates in state correctional facilities to that customer's number where technically feasible. This restriction does not apply to administrative lines at the correctional facilities.

(5) Upon request of a customer by verbal request, by electronic communications or by writing, all interexchange telecommunications carriers shall restrict all toll calls without a valid passcode from that customer's number where technically feasible.

(6) Upon request of a customer by verbal request, by electronic communications or by writing, and where technically feasible, local telecommunications carriers shall restrict all calls using a dialing pattern such as 10-10-XXX or 101-XXXX from that customer's number.

(7) Customers shall be notified of the rights in sections (3), (4), (5) and (6) above at the time of establishing service, through a statement on the customer's first bill or through a welcome letter. Additional notice shall be provided annually thereafter by bill insert, statement on customer bills or annually in the telephone directory. A customer shall be notified of the restriction option(s) in section(s) (3), (4), (5) or (6) above each time that customer notifies a telecommunications carrier or its billing agent that the customer's bill contains unauthorized charges related to the corresponding section(s) above.

**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 386.040 and 386.250, RSMo 2000 and 392.200, RSMo Supp. 2003, the commission amends a rule as follows:

4 CSR 240-33.070 Discontinuance of Service to Residential Customers is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2004 (29 MoReg 381). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period

ended March 30, 2004, and the commission held a public hearing on this proposed amendment April 23, 2004. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the amendment. Michael Dandino of the Office of the Public Counsel also testified generally in support of the amendment at the public hearing. Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, testified generally that the proposed amendment was unnecessary. Six (6) written comments specifically addressed the proposed amendment. At the public hearing, Natelle Dietrich of the commission's staff and Michael Dandino of the Office of the Public Counsel responded to the specific written comments and Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, provided specific comments in addition to her written comments on the proposed amendment.

RESPONSE: The commission has previously found that this rule amendment is necessary to carry out the purposes of sections 386.040, 386.250, 392.200 and 392.540, RSMo.

COMMENT: Carl Lumley, counsel for MCI; Richard Telthorst, president of the Missouri Telecommunications Industry Association; Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri; R. Matt Kohly, state director, government affairs, AT&T; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, filed comments either providing an additional option for a telecommunications company to attempt to reach a customer whose service is to be immediately blocked or discontinued as a result of the provisions of section (9) involving the use of regular mail and subsequent attempts to reach the customer by telephone, or deleting the requirement that contact be made via certified mail. MCI and MTIA representatives explained that receipt of certified mail might be delayed because of the signature requirement. SBC Missouri and AT&T indicated that certified mail is potentially costly. SBC Missouri also indicated that notice via door hangers is not a suitable substitute because some customers' doors may not be accessible, a door hanger could be easily removed, and use of door hangers could lead to allegations of libel or invasions of privacy. AT&T indicated that by the time service is disconnected, the company would already have made numerous attempts to contact the customer. Natelle Dietrich of the commission's staff at the public hearing testified that the initial draft of the rule did not include immediate customer notification but that industry and commissioner feedback supported immediate notification, and that the staff opposed any alterations to this section. RESPONSE: The commission will not modify this section. This section only deals with service that was immediately blocked or disconnected because of illegal or unauthorized use. Customers should be notified of the blocking or disconnection of their service in a way that will obtain their attention and certified, overnight mail or door hangers are methods of obtaining that attention.

COMMENT: Michael Dandino of the Office of the Public Counsel testified at the public hearing that it is opposed to any type of surcharge, especially a surcharge for the Universal Service Fund, and that it is unfair for local service to be discontinued for nonpayment of a Universal Service Fund surcharge as provided in section (3).

RESPONSE: The commission will not modify this section. The commission has previously determined in a proceeding before it that a Universal Service Fund surcharge is the method for telecommunications companies to fund such a fund and such a surcharge is required by 4 CSR 240-31.065.

COMMENT: Michael Dandino of the Office of the Public Counsel testified that the rules should be expanded to apply to small businesses and suggested limiting the definition of small business customer to businesses with fewer than ten (10) employees.

RESPONSE: This would require a change to the definition of "customer," and has a significant impact on all rules within this chapter,

including rules not raised in this rulemaking proceeding. No fiscal analysis has been performed on this proposal. Such an amendment is beyond the scope of this proceeding and would require consideration of such topics as how to determine "employee" status (e.g., full-time, part-time, independent contractor); how to address fluctuating numbers of employees; corporate versus partnership status vis-à-vis employee status; whether to consider the number of employees at a particular location or company-wide; determining who shall determine small business status (self-reporting, auditing, monitoring). Other definitions may be possible. No changes will be made as a result of this comment.

**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 386.040 and 386.250, RSMo 2000 and 392.200, RSMo Supp. 2003, the commission amends a rule as follows:

4 CSR 240-33.080 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2004 (29 MoReg 381-382). 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: The written public comment period ended March 30, 2004, and the commission held a public hearing on this proposed amendment April 23, 2004. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the amendment. Michael Dandino of the Office of the Public Counsel also testified generally in support of the amendment at the public hearing. Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, testified generally that the proposed amendment was unnecessary. Five (5) written comments specifically addressed the proposed amendment. At the public hearing, Natelle Dietrich of the commission's staff and Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, provided specific comments in addition to their written comments on the proposed amendment.

RESPONSE: The commission has previously found that this rule amendment is necessary to carry out the purposes of sections 386.040, 386.250, 392.200 and 392.540, RSMo.

COMMENT: Carl Lumley, counsel for MCI; Richard Telthorst, president of the Missouri Telecommunications Industry Association; John Idoux, senior manager, Sprint; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, each filed a comment recommending the deletion of section (1) because they suggest it is redundant of a similar provision at 4 CSR 240-33.040(8)(K). At the public hearing, Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, agreed with this comment. Natelle Dietrich of the commission's staff disagreed, because local carriers may bill on behalf of other carriers and would not be the proper party to receive billing questions. In its written comments, the commission's staff recommended the replacement of the word "the" with "each" before the reference to a toll free number for calling because multiple carriers may be referenced on a bill but each may have its own toll free number. Also at the public hearing, Natelle Dietrich of the commission's staff recommended the replacement of the reference to "inquiries" with "disputes" because

the section addresses customer disputes.

RESPONSE AND EXPLANATION OF CHANGE: The commission will change the proposed language in section (1) to replace the words "the" with "each" and insert a reference to disputes as recommended by commission staff. The reference to "inquiries" will be removed. The rule is not now redundant of another commission rule, because it contains the requirement that a company name associated with the toll free number for customer use; this is distinct from the requirement elsewhere in commission rules that a bill simply contain a toll free number. Thus, the commission will not delete section (1) in its entirety.

COMMENT: Michael Dandino of the Office of Public Counsel testified that the rules should be expanded to apply to small businesses and suggested limiting the definition of small business customer to businesses with fewer than ten (10) employees.

RESPONSE: This would require a change to the definition of "customer," and has a significant impact on all rules within this chapter, including rules not raised in this rulemaking proceeding. No fiscal analysis has been performed on this proposal. Such an amendment is beyond the scope of this proceeding and would require consideration of such topics as how to determine "employee" status (e.g., full-time, part-time, independent contractor); how to address fluctuating numbers of employees; corporate versus partnership status vis-à-vis employee status; whether to consider the number of employees at a particular location or company-wide; determining who shall determine small business status (self-reporting, auditing, monitoring). Other definitions may be possible. No changes will be made as a result of this comment.

4 CSR 240-33.080 Disputes by Residential Customers

(1) All bills shall clearly identify each company name associated with the toll free number the customer will be calling for billing disputes.

**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 386.040 and 386.250, RSMo 2000 and 392.200, RSMo Supp. 2003, the commission amends a rule as follows:

4 CSR 240-33.110 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 15, 2004 (29 MoReg 461). 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: The written public comment period ended April 14, 2004, and the commission held a public hearing on this proposed amendment April 23, 2004. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the amendment. Michael Dandino of the Office of the Public Counsel also testified generally in support of the amendment at the public hearing. Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, testified generally that the proposed amendment was unnecessary. Six (6) written comments specifically addressed the proposed amendment. At the public hearing, Natelle Dietrich of the commission's staff responded to the specific written comments and Mimi MacDonald,

counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, provided specific comments in addition to its written comments on the proposed amendment.

RESPONSE: The commission has previously found that this rule amendment is necessary to carry out the purposes of sections 386.040, 386.250, 392.200 and 392.540, RSMo.

COMMENT: Carl Lumley, counsel for MCI; Richard Telthorst, president of the Missouri Telecommunications Industry Association; John Idoux, senior manager, Sprint; Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri; and Larry Dority, counsel for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, filed or concurred in comments requesting the commission to alter the requirement in subsection (3)(A) that a company acknowledge receipt of inquiries from the commission staff related to denial or discontinuance of service issues within one business day, rather than within twenty-four (24) hours of receipt. The commenters suggested that the commission staff may inquire on a Friday, and company personnel and commission staff may not be available to address the response on a Saturday. At the public hearing, Natelle Dietrich of the commission's staff testified that because under existing rules, disconnections may only take place when the disconnecting utility is open both on the day of and on the day following disconnection, staff failed to see a concern with a twenty-four (24) hour response time.

RESPONSE AND EXPLANATION OF CHANGE: The commission will modify the proposed amendment. The companies have indicated in their comments that if they receive an inquiry from commission staff on a Friday afternoon, they will be required to respond by Saturday afternoon. Inquiries related to denial or discontinuance may not relate to denial or discontinuance events that take place on the same day the inquiry is made, and inquiries may be made on Fridays even if companies do not deny or discontinue service on Fridays. This is a possible concern and not within the intent of the rule. Therefore the language will be amended.

COMMENT: Michael Dandino of the Office of the Public Counsel testified that the rules should be expanded to apply to small businesses and suggested limiting the definition of small business customer to businesses with fewer than ten (10) employees.

RESPONSE: This would require a change to the definition of "customer," and has a significant impact on all rules within this chapter, including rules not raised in this rulemaking proceeding. No fiscal analysis has been performed on this proposal. Such an amendment is beyond the scope of this proceeding and would require consideration of such topics as how to determine "employee" status (e.g., full-time, part-time, independent contractor); how to address fluctuating numbers of employees; corporate versus partnership status vis-à-vis employee status; whether to consider the number of employees at a particular location or company-wide; determining who shall determine small business status (self-reporting, auditing, monitoring). Other definitions may be possible. No changes will be made as a result of this comment.

4 CSR 240-33.110 Commission Complaint Procedures

(3) A telecommunications company shall acknowledge or respond by fax transmission or electronic mail to all commission staff inquiries related to informal complaints as follows:

(A) The company shall acknowledge receipt of inquiries related to denial or discontinuance of service issues within one (1) business day;

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 386.040, and 386.250, RSMo 2000 and 392.200, RSMo Supp. 2003, the commission amends a rule as follows:

4 CSR 240-33.150 Verification of Orders for Changing Telecommunications Service Provider is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2004 (29 MoReg 382-384). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended March 30, 2004, and the commission held a public hearing on this proposed amendment April 23, 2004. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the amendment. Michael Dandino of the Office of the Public Counsel also testified generally in support of the amendment at the public hearing. Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, testified generally that the proposed amendment was unnecessary. No comments recommended specific changes to this proposed amendment.

RESPONSE: No changes have been made to the amendment as a result of the general comments. The commission has previously found that this rule amendment is necessary to carry out the purposes of sections 386.040, 386.250, 392.200 and 392.540, RSMo.

COMMENT: Michael Dandino of the Office of the Public Counsel testified that the rules should be expanded to apply to small businesses and suggested limiting the definition of small business customer to businesses with fewer than ten (10) employees.

RESPONSE: This would require a change to the definition of "customer," and has a significant impact on all rules within this chapter, including rules not raised in this rulemaking proceeding. No fiscal analysis has been performed on this proposal. Such an amendment is beyond the scope of this proceeding and would require consideration of such topics as how to determine "employee" status (e.g., full-time, part-time, independent contractor); how to address fluctuating numbers of employees; corporate versus partnership status vis-à-vis employee status; whether to consider the number of employees at a particular location or company-wide; determining who shall determine small business status (self-reporting, auditing, monitoring). Other definitions may be possible. No changes will be made as a result of this comment.

Title 9—DEPARTMENT OF MENTAL HEALTH Division 10—Director, Department of Mental Health Chapter 5—General Program Procedures

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Mental Health, under section 630.050, RSMo 2000, the director amends a rule as follows:

9 CSR 10-5.190 Background Screening for Employees and Volunteers is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2004 (29 MoReg 735-736). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed

amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 10—Nursing Home Program**

ORDER OF RULEMAKING

By the authority vested in the Division of Medical Services under sections 208.153, 208.159 and 208.201, RSMo 2000, the director amends a rule as follows:

13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2004 (29 MoReg 736-740). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.