

COMMENT: One comment noted that the proposed rule as currently drafted will conflict with another Commission rule, namely 4 CSR 240-10.070(1), which governs the filing of general rate cases. The company indicated that there are several ways to deal with this conflict between the two rules, but it appears that the most effective and easiest way to address the problem would be to simply add some "notwithstanding" language to the proposed rule. Accordingly, the company suggested that the Commission add the following language to Section (1) when it adopts the final rule: "Notwithstanding any other rule to the contrary, [S]small companies" The company stated that this minor addition, or some similar language, should take care of any conflict between the proposed new rule and the existing general rate case rule and should allow the Commission to proceed with the new small company rate increase procedure rule without the need for further delay.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has reviewed the comment and finds that the suggested language should be included in the rule. The phrase "Notwithstanding any other rule to the contrary" has been added to the beginning of Section (1), in order to avoid possible conflict between the two rules.

4 CSR 240-2.200 Small Company Rate Increase Procedure

(1) Notwithstanding any other rule to the contrary, small companies, as defined in this rule, may seek a general increase in revenues through a small company rate case by filing a letter requesting the change. The request shall not be accompanied by any tariff sheets. For the purpose of this rule, small companies qualifying to use the small company rate case described in this rule shall include water and sewer utilities having eight thousand (8,000) or fewer customers and gas utilities having three thousand (3,000) or fewer customers. The small company rate case shall be conducted as follows:

(A) The original letter requesting the change shall be filed with the secretary of the commission and one (1) copy shall be furnished to the public counsel. The letter shall state the amount of the additional revenue requested, the reason(s) for the proposed change and a statement that all commission annual assessments have been paid in full or are being paid under an installment plan. The letter should also include a statement that the company's current annual report is on file with the commission. The company, in writing, shall notify customers of the request for additional revenue and the effect on the typical residential customer's bill. The notice shall indicate that customers' responses may be sent to the appropriate commission department or the public counsel within thirty (30) days of the date shown on the notice. A draft copy of the notice shall be sent to the appropriate commission department for verification of the accuracy of the notice before being sent to the company's customers. A copy of the final notice shall then be sent to the appropriate commission department and the public counsel. The commission staff and the public counsel shall exchange copies of customer responses upon their receipt. Upon receipt of the company's request, the commission staff shall schedule an investigation of the company's operations and an audit of its financial records. When the investigation and audit are complete, the commission staff shall notify the company and public counsel whether the requested additional revenue is recommended in whole or in part, of the rate design proposal for the increase, and of any recommended operational changes. If public counsel wishes to conduct an investigation and audit of the company, it must do so within the same time period as staff's investigation and audit;

(B) The commission staff, within twenty-one (21) days from the completion of its investigation, shall arrange a conference with the company and shall notify the public counsel of the conference prior to the conference, in order to provide the public counsel an opportunity to participate;

(C) If the conference between the commission staff, the company and the public counsel results in an agreement concerning additional revenue requirements and any other matters pertaining to the company's operations, including responses to customer concerns, the agreement between the commission staff, the company and the public counsel shall be reduced to writing. The company may then file tariff sheet(s) with an effective date which is not fewer than thirty (30) days after the tariff's issue date and no additional customer notice or local public hearing shall be required, unless otherwise ordered by the commission. The company shall file a copy of the agreement with its tariff;

(D) If the conference results in an agreement between the commission staff and the company only, the company at this time shall file the necessary tariff sheet(s) with the commission in accordance with the agreement. The tariff sheet(s) shall contain an effective date of not fewer than forty-five (45) days from the issue date. The company shall notify customers in writing of the proposed rates resulting from the agreement. The notice shall indicate that customers' responses may be sent to the appropriate commission department or the public counsel within twenty (20) days of the date shown on the notice. A copy of the notice shall be sent to the secretary of the commission and the public counsel. The commission staff and the public counsel shall exchange copies of the customer responses upon their receipt. The public counsel shall file a pleading indicating its agreement or disagreement with the tariff sheet(s) within twenty-five (25) days of the date the tariff sheet(s) is filed, unless a public hearing is requested;

(E) A request for a local public hearing may be filed after the tariff sheet(s) is filed by the company. The request shall be filed within twenty (20) days of the filing of the tariff sheet(s) by the company. Public counsel shall file a pleading indicating agreement or disagreement with the tariff sheet(s) within seven (7) days after the local public hearing;

(F) An agreement must be reached and tariff sheet(s) filed based upon the agreement within one hundred fifty (150) days from the date the letter initiating the case is filed. This time period may be extended with the consent of the company. Written consent for an extension shall be filed with the company's tariff; and

(G) If no agreement can be reached between the commission staff and the company, the company may initiate a standard rate case.

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Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 32—Telecommunications Service

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.040, RSMo 1994 and 386.250, 392.200, 392.450 and 392.451, RSMo Supp. 1999, the commission adopts a rule as follows:

4 CSR 240-32.110 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2341-2343). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on November 2, 1999. Written comments were submitted.

COMMENT: A comment suggests that the commission require that the bond be issued by a surety authorized to do business in Missouri.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and the suggested change has been incorporated into the rule.

COMMENT: A comment suggests that the basic local telecommunications company be required to maintain a bond for so long as it has any customer prepayments or deposits and suggests that the bond not be waived after three years.

RESPONSE AND EXPLANATION OF CHANGE: The commission acknowledges the concerns expressed in the comment. However, on balance, the commission believes that a basic local telecommunications company that has successfully complied with the surety requirement for three consecutive years has demonstrated sufficient financial stability to justify the possible lifting of the surety requirement. The rule has, however, been changed so that the lifting of the surety requirement after three years is not automatic. The revised rule indicates that the commission may eliminate that requirement but does not mandate that the commission shall do so.

COMMENT: A comment suggests that there is no evidence that a surety-bonding requirement is needed. It suggests that there is no problem that needs to be addressed.

RESPONSE: The commission disagrees with the comment. A witness for the Staff of the Commission testified at the hearing regarding the need for this rule. In addition, the comment filed by Southwestern Bell Telephone Company, which details its experiences with basic local telecommunications companies that have failed in other states, illustrates the need for this rule.

COMMENT: A comment suggests that it is unfair to impose a surety requirement on providers of basic local service while not imposing a similar requirement on providers of interexchange telecommunications services.

RESPONSE: The financial obligations of a company that wants to provide basic local service differ significantly from those that only provide interexchange service. The commission does not believe that it would be appropriate to expand this rule to include interexchange telecommunications providers.

COMMENT: A comment suggests that the surety requirement should be waived if a basic local telecommunications company agrees not to take customer deposits.

RESPONSE: The commission disagrees with the comment. The comment considers only one aspect of the rule. The rule is also designed to ensure that a basic local telecommunications company has the financial resources to successfully provide the services it is seeking to offer. Furthermore, the surety requirement is designed to protect the carriers-of-last-resort that would be obligated to provide transition service to the customers of a basic local telecommunications company that suddenly ceases operation. Neither of these aspects of the rule depends upon whether or not a basic local telecommunications company agrees to take customer deposits.

COMMENT: A comment suggests that a basic local telecommunications company be allowed to meet the surety requirement by posting an irrevocable bank letter of credit or by opening an escrow account, as an alternative to posting a surety bond.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and the rule has been modified to allow for the posting of a letter of credit or the opening of an escrow account.

COMMENT: A witness for the staff of the commission testified at the hearing that the rule was not intended to ensure the payment of the general debt obligations a basic local telecommunications company might owe to other telecommunications providers.

RESPONSE AND EXPLANATION OF CHANGE: Subsection (E) of the rule was modified to remove the provision allowing such claims to be made against the bond. In addition, subsection (D) was modified to remove the requirement that the basic local telecommunications company maintain records of amounts owed to other telecommunications providers. No other comments were received.

4 CSR 240-32.110 Surety Bonding Requirements for Basic Local Telecommunications Companies

(1) To ensure the protection of the basic local telecommunications company end-users and other telecommunications providers, any basic local telecommunications company with less than a two hundred fifty thousand dollars (\$250,000) net book value in telephone plant and/or telephone facilities located in Missouri shall maintain a third-party surety bond issued by a surety authorized to do business in Missouri, an irrevocable bank letter of credit issued by a bank or other financial institution doing business in Missouri, an escrow account at a bank or other financial institution in Missouri, or other mechanism as may be approved by the commission.

(A) The bond, letter of credit, or escrow account shall be in the amount of one hundred thousand dollars (\$100,000), and shall be payable to the Missouri Public Service Commission. Such bond, letter of credit, or escrow account shall be maintained for the benefit of the basic local telecommunications company's end-user customers who have prepaid for services from the basic local telecommunications company or who have given a deposit for services to the basic local telecommunications company. Such bond, letter of credit, or escrow account shall also be maintained for the benefit of any telecommunications company serving as a carrier-of-last-resort that is required to provide transition services to a basic local telecommunications company's end-user customers in the event that the basic local telecommunications company ceases to provide basic local telecommunications services to those end-user customers for any reason other than cause as provided for in its approved tariffs. The basic local telecommunications company shall submit proof that it has complied with this requirement, or that it is exempt. Such proof shall be contained in an application to provide basic local telecommunications services or on a form, provided by the commission, to be filed annually.

(B) The bond, letter of credit, or escrow account shall be maintained as long as the basic local telecommunications company is furnishing basic local telecommunications service in the state of Missouri pursuant to this chapter unless modified or released pursuant to commission order.

(C) The bond shall provide that the issuer of the bond shall notify the commission when the bond is canceled or is otherwise terminated prematurely. The bank or other financial institution that issues a letter of credit or holds an escrow account shall notify the commission when the letter of credit is canceled or the escrow account is closed.

(D) The basic local telecommunications company shall maintain records that identify by customer name, address and telephone number the dollar amount of a customer's prepaid basic local telecommunications services and any held deposits. Such records shall be made available to the commission, upon request.

(E) Claims against the bond, letter of credit, or escrow account shall be paid in the following order: first, claims from end-user customers for return of deposits and for claims for prepaid basic local telecommunications services; second, claims from carriers-of-last-resort for costs incurred by the carrier-of-last-resort for providing end-users with uninterrupted basic local telecommunications service should the basic local telecommunications company cease providing that service for any reason other than cause as provided for in its approved tariffs.

(2) Upon application to the commission, the surety requirement mandated under section (1) may be waived if the basic local

communications company successfully complies with the sure-requirement for a period of three (3) consecutive years.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission Chapter 32—Telecommunications Service

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.040, RSMo 1994 and 386.250, 392.200, 392.450 and 392.451, RSMo Supp. 1999, the commission adopts a rule as follows:

4 CSR 240-32.120 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2344-2346). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on November 4, 1999. Written comments were submitted.

COMMENT: Written comments, as well as testimony at the hearing, strongly urged the commission to limit application of this rule to companies that are reselling the services of a carrier-of-last-resort. The comments pointed out that companies that are providing services through unbundled network elements or through their own facilities are less likely to suddenly go out of business and thus are less likely to trigger the need for a snap-back procedure. The comments also pointed out many technical and legal barriers to imposing the proposed snap-back procedures when service is provided through unbundled network elements or separate facilities.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comments. The rule has been modified so that it will apply only to resellers of services. It will not apply to the provision of service to end-user customers through unbundled network elements or through separate facilities. Section (5) of the proposed rule, which applied only to facilities based providers has been eliminated in its entirety.

COMMENT: The staff of the Public Service Commission suggested that a provision be added to account for a situation where there may be more than one carrier-of-last-resort in a given service area.

RESPONSE AND EXPLANATION OF CHANGE: The concerns expressed by the staff are addressed in new section (4) that provides that if there is more than one carrier-of-last-resort in a service area, the customers of the company that has ceased operation will be transferred to the carrier-of-last-resort whose services are being resold.

COMMENT: One comment suggests that the rule provide that no company may cease serving customers until the commission has approved its plan to abandon service.

RESPONSE: The comment seemingly would have the commission expand the reach of Section 392.460, RSMo 1994 to include competitive local exchange companies. The commission has neither the power, nor the inclination to do so.

COMMENT: One comment suggests that the carrier-of-last-resort should be required to provide at least transitional service to all customers of the company that is ceasing to provide service. The comment asks that no exception be made for when the carrier-of-last-

resort's tariff would not require service to that customer. Another comment takes the opposite position and suggests that the rule should clearly indicate that the carrier-of-last-resort should not be required to provide even interim service to a customer that it would not otherwise serve.

RESPONSE AND EXPLANATION OF CHANGE: The exception in question would allow the carrier-of-last-resort to not provide transition service to customers whom the carrier-of-last-resort would not serve under its own tariffs, most often because of unpaid bills. The purpose of this regulation is to ensure that Missouri's phone customers do not suddenly lose basic local phone service because of the failure of their basic local phone service provider. In order to fulfill that purpose, the carrier-of-last-resort must be required to provide transitional services to all of the customers who would otherwise suddenly lose service. This requirement may impose some additional costs on the carrier-of-last-resort because of unpaid bills. However, those additional costs should not be unduly burdensome. A witness who appeared at the hearing on behalf of Southwestern Bell Telephone Company testified that Southwestern Bell has taken back customers of failed basic local providers in other states. The witness indicated that Southwestern Bell will take back all customers for a transition period, even if those customers owe money to Southwestern Bell. Section (3) has been modified to specifically require the carrier-of-last-resort to provide transitional service to all customers of the company that ceases service.

COMMENT: One comment suggests that if the customer has not chosen a new carrier at the end of the thirty-day interim period, the carrier-of-last-resort be required to continue to provide service to the customer.

RESPONSE AND EXPLANATION OF CHANGE: The commission disagrees with the comment. Requiring the carrier-of-last-resort to continue to provide service to a customer after the end of the interim period would be unfair to the carrier-of-last-resort if it does wish to provide services to that customer if, for example, that customer is a poor payment risk. Paradoxically, under other circumstances, it might be unfair to the carrier-of-last-resort's competitors to allow the carrier-of-last-resort to inherit the good customers of the company that ceases providing service unless those customers affirmatively choose to engage the services of the carrier-of-last-resort. A provision has been added to section (3) to clarify that the carrier-of-last-resort is under no obligation to provide service to a customer beyond the thirty-day interim period.

COMMENT: One comment suggests that if the carrier-of-last-resort selects an intraLATA and/or interLATA carrier for an interim customer, the carrier-of-last-resort be required to notify the customer of its right to make a PIC change without charge to the customer's preferred carrier.

RESPONSE: The commission will decline to impose this additional cost on the carrier-of-last-resort.

COMMENT: One comment suggests that the rule should provide that the customer shall not be charged any installation or service fee for the interim transition back to the carrier-of-last-resort. The comment suggests that the carrier-of-last-resort should bill those costs to the company that is ceasing to provide service and thereby necessitating the snap-back. Another comment suggests that the carrier-of-last-resort should not be held responsible for the cost of transitioning the customer and that the rule should explicitly state that the customer shall be responsible for all charges relating to the snap-back procedure.

RESPONSE: The carrier-of-last-resort and the customer are both innocent victims in a snap-back situation. There is no reason to impose the cost of the snap-back procedure on the carrier-of-last-resort. When a customer chooses to accept the benefits of obtaining basic local phone service from a competitive company, they