

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 or 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 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-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 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 43.543, 331.070 and 331.100.2, RSMo 1994, the board amends a rule as follows:

4 CSR 70-2.090 Fees is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 1999 (24 MoReg 1722-1723). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 230—State Board of Podiatric Medicine
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Podiatric Medicine under sections 330.010 and 330.140, RSMo Supp. 1998, the board amends a rule as follows:

4 CSR 230-2.010 Application for Licensure by Examination is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 1999 (24 MoReg 1649-1650). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 230—State Board of Podiatric Medicine
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Podiatric Medicine under sections 330.010 and 330.140, RSMo Supp. 1998, the board amends a rule as follows:

4 CSR 230-2.065 Temporary Licenses for Internship/Residency is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 1999 (24 MoReg 1650). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty 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 33—Service and Billing Practices for Telecommunications Companies

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.040, RSMo 1994, and 386.250, 392.200 and 392.540, RSMo Supp. 1998, the commission adopts a rule as follows:

4 CSR 240-33.150 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 2, 1999 (24 MoReg 1842-1845). 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 hearing was held on September 3, 1999, at 10:00 a.m. at the Harry S Truman State Office Building, Room 520B, 301 West High Street, Jefferson City, Missouri. Oral testimony and written comments were received during the comment period.

COMMENT: Several comments offered support for the proposed rule so long as the rule remains consistent with the Federal Communications Commission (FCC) and does not include portions

of the federal rule which have been stayed by the U.S. Court of Appeals for the D.C. Circuit. The provisions of the Missouri rule which correspond to the stayed federal rule are sections (6), (7), and (8).

RESPONSE AND EXPLANATION OF CHANGE: The Commission has considered these comments and has reviewed the requirements of Section 392.540, RSMo Supp. 1998, which directs that any Missouri rule regarding the submission or execution of changes and verification procedures must be consistent with the FCC's rules. The statute does not mention liability issues. Therefore, the Commission has chosen to delete sections (7) and (8). However, the Commission believes that it is appropriate to leave section (6), regarding carrier liability, in the final rule. Once the stay has been resolved at the federal level, the Commission will revisit this issue.

COMMENT: The Commission should forebear from adopting sections (7) and (8) of its proposed rule until after the Federal Communications Commission (FCC) has considered the third party administrator proposal.

RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment and the comments previously noted, the Commission has chosen to delete sections (7) and (8) until the stay has been resolved at the federal level.

COMMENT: Section (7) should be revised. A slammed consumer should be given absolution whether payment is made or not. The thirty-day absolution period is not sufficient and should be increased to 90 days. The rules should be amended to provide that if a subscriber pays for unauthorized service, the unauthorized carrier shall make a direct refund to the consumer. The authorized carrier should not be paid for service not provided during the slam period.

RESPONSE: As noted previously, section (7) has been deleted. No changes were made to the rule as a result of these comments.

COMMENT: One comment supported the proposed rule to the extent that it mirrors the currently effective Federal Communications Commission (FCC) rule. However, this comment suggested that the proposed rule should not be implemented until the issues with the federal rules are finally resolved by the FCC and/or the court.

RESPONSE: Section 392.540, RSMo, Supp. 1998, requires the Commission to implement a rule which is consistent with the FCC rule. The Commission is unable to wait for these matters to be resolved on the federal level. No changes were made to the rule as a result of this comment.

COMMENT: The rule should be adopted as proposed. The portions of the rule which have been stayed at the federal level should be included until final disposition of the federal case.

RESPONSE: Although the Commission appreciates the support of its proposed rule, it has determined that it can best implement a rule which is consistent with the federal rule by deleting sections (7) and (8). No changes were made to the rule as a result of this comment.

COMMENT: One party filed written comments regarding possible changes to clarify treatment of customer-initiated changes. However, this party later indicated that it was satisfied with the proposed rule without a change in this area.

RESPONSE: No changes were requested and no changes were made to the rule as a result of this comment.

COMMENT: The Commission should add an additional section which lists, in one place, the rights of the subscriber.

RESPONSE: Various provisions of the rule provide for customer rights. These provisions are consistent with the federal rule. The

rule is appropriate as written and no changes were made as a result of this comment.

COMMENT: The Commission should disseminate additional information about slamming to the public. The comment also suggested a specific process to be followed after a subscriber is slammed.

RESPONSE: The Commission has considered this comment and has determined that no changes need to be made to the rule as a result of the comment. The rule complies with both Section 392.540, RSMo, Supp. 1998, and the federal rule regarding slamming, and the suggested change is unnecessary.

COMMENT: Various sections of the rule should be renumbered in order to be more consistent with the numbering scheme used in the federal rule.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees and will renumber portions of sections (2), (3) and (5).

COMMENT: Paragraph (4)(E)4. states that the letter of agency "shall contain separate statements regarding intraLATA, interLATA and intrastate and interstate, although a separate letter of agency for each choice is not necessary; . . ." This wording suggests that there are not only separate intraLATA and interLATA choices but separate intrastate and interstate choices as well. In Missouri, carriers implemented a PIC system that allows for an interLATA 1+ carrier and an intraLATA 1+ carrier. The rule should be clarified to be consistent with the choices actually available to the customer.

RESPONSE AND EXPLANATION OF CHANGE: The comment is well taken. The Commission will revise paragraph (4)(E)4.

COMMENT: The Commission should modify section (5) regarding preferred carrier freezes to ensure that consumers benefit from a competitive marketplace.

RESPONSE: Section 392.540, RSMo, Supp. 1998, requires the Commission to implement a rule which is consistent with the FCC rule. The proposed rule closely mirrors the federal rule; the Commission finds that additional modifications to the rule are not necessary at this time. No changes were made to the rule as a result of this comment.

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

(2) Changes in Subscriber Carrier Selections.

(A) No telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in 4 CSR 240-33.150.

1. No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining: a) authorization from the subscriber, and b) verification of that authorization in accordance with the procedures prescribed in section (3). For a submitting carrier, compliance with the procedures prescribed in 4 CSR 240-33.150 shall be defined as compliance with 4 CSR 240-33.150(2) and (3). The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two (2) years after obtaining such verification.

2. An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures prescribed in 4 CSR 240-33.150 shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

3. Where a telecommunications carrier is selling more than one (1) type of telecommunications service (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in 4 CSR 240-33.150.

(3) Verification of Orders for Telecommunications Service.

(A) No telecommunications carrier shall submit a preferred carrier change order unless and until the order has first been confirmed in accordance with subsection (3)(B), (C) or (D).

(B) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of 4 CSR 240-33.150(4).

(C) The telecommunications carrier has obtained the subscriber's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information required in section (4) of this rule. Telecommunications carriers electing to confirm sales electronically shall establish one (1) or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) shall connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier change, including automatically recording the originating automatic numbering identification.

(D) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth). The independent third party—a) must not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; b) must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and c) must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier change.

(4) Letter of Agency Form and Content.

(A) A telecommunications carrier may use a letter of agency to obtain written authorization and/or verification of a subscriber's request to change his or her preferred carrier selection. A letter of agency that does not conform with this section is invalid for purposes of 4 CSR 240-33.150.

(B) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in subsection (E) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the preferred carrier change.

(C) The letter of agency shall not be combined on the same document with inducements of any kind.

(D) Notwithstanding subsections (B) and (C) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in subsection (E) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a preferred carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(E) At a minimum, the letter of agency shall be printed with a type of sufficient size and readable type to be clearly legible and shall contain clear and unambiguous language that confirms—

1. The subscriber's billing name and address and each telephone number to be covered by the preferred carrier change order;

2. The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier;

3. That the subscriber designates the submitting carrier to act as the subscriber's agent for the preferred carrier change;

4. That the subscriber understands that only one (1) telecommunications carrier may be designated as the subscriber's interstate or interLATA preferred interexchange carrier for any one (1) telephone number. The letter of agency shall contain separate statements regarding intraLATA/intrastate and interLATA/interstate, although a separate letter of agency for each choice is not necessary; and

5. That the subscriber understands that any preferred carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's preferred carrier.

(F) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the subscriber.

(G) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

(H) If any portion of a letter of agency is translated into another language then all portions of the letter of agency shall be translated into that language. Every letter of agency shall be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

(5) Preferred Carrier Freezes.

(A) A preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this section.

(B) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all subscribers, regardless of the subscriber's carrier selections.

(C) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(D) Solicitation and Imposition of Preferred Carrier Freezes.

1. All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

A. An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

B. A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the commission's verification rules in sections 4 CSR 240-33.150(2) and (3) for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze; and

C. An explanation of any charges associated with the preferred carrier freeze.

2. No local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one (1) of the following procedures:

A. The local exchange carrier has obtained the subscriber's written and signed authorization in a form that meets the requirements of 4 CSR 240-33.150(4); or

B. The local exchange carrier has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate verification data (e.g., the subscriber's date of birth) and the information required in section (4). Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

C. An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data (e.g., the subscriber's date of birth) and the information required in section (4). The independent third party must—1) not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; 2) must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and 3) must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier freeze.

3. Written authorization to impose a preferred carrier freeze. A local exchange carrier may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this section is invalid and may not be used to impose a preferred carrier freeze.

A. The written authorization shall comply with section (4) of the commission's rules concerning the form and content for letters of agency.

B. At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms—

(I) The subscriber's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(II) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (e.g., for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;

(III) That the subscriber understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(IV) That the subscriber understands that any preferred carrier freeze may involve a charge to the subscriber.

(E) Procedures for Lifting Preferred Carrier Freezes. All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:

1. A local exchange carrier administering a preferred carrier freeze must accept a subscriber's written and signed authorization stating her or his intent to lift a preferred carrier freeze; and

2. A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three (3)-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. When engaged in oral autho-

rization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (e.g., the subscriber's date of birth) and the subscriber's intent to lift the particular freeze.

(6) Carrier Liability for Charges. Any submitting telecommunications carrier that fails to comply with the procedures prescribed in 4 CSR 240-33.150 shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid to the submitting telecommunications carrier by such subscriber after such violation. The remedies provided in 4 CSR 240-33.150 are in addition to any other remedies available at law.

Title 10—DEPARTMENT OF NATURAL RESOURCES

Division 25—Hazardous Waste Management Commission

Chapter 12—Hazardous Waste Fees and Taxes

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission under sections 260.370 and 260.437, RSMo Supp. 1998 and 260.380, 260.475 and 260.479, RSMo 1994, the commission amends a rule as follows:

10 CSR 25-12.010 Fees and Taxes is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 1999 (24 MoReg 1383-1386). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: During the public hearing before the Missouri Hazardous Waste Management Commission on July 9, 1999, the department testified that the proposed amendment ensures that revenue generated by the category tax meets the statutory requirement of \$1.5 million dollars. There was one oral comment offered at the hearing and one written comment was received.

COMMENT: A representative of the Regulatory Environmental Group for Missouri expressed support of the need for the amendment. The individual also expressed support on behalf of the Missouri Chamber of Commerce and Associated Industries of Missouri.

RESPONSE: The department agrees with the comment and appreciates the input from industry representatives.

COMMENT: Associated Industries of Missouri submitted a written comment that expressed support for the proposed amendment of the category tax rate. They commented that the amendment reflects a requirement to adjust the category tax to meet the statutory requirement and recognize the change as being in accord with current law.

RESPONSE: The department agrees with the comment and appreciates the input from industry representatives.

Title 10—DEPARTMENT OF NATURAL RESOURCES

Division 25—Hazardous Waste Management Commission

Chapter 14—Administrative Penalties

ORDER OF RULEMAKING