authorized by law to prescribe drugs and who has performed a sufficient physical examination and clinical assessment of the patient. A pharmacist shall not dispense a prescription drug if the pharmacist has knowledge, or reasonably should know under the circumstances, that the prescription order for such drug was issued on the basis of an Internet-based questionnaire, an Internet-based consultation, or a telephonic consultation, all without a valid preexisting patient-practitioner relationship.

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 338.140 and 338.280, RSMo 2000 and 620.010.15(6), RSMo Supp. 2004, the board amends a rule as follows:

4 CSR 220-2.050 Public Complaint Handing and Disposition Procedure **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1123). 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 5—Drug Distributor

ORDER OF RULEMAKING

By the authority vested in the State Board of Pharmacy under sections 338.333, 338.343 and 338.350, RSMo 2000, the board amends a rule as follows:

4 CSR 220-5.030 Definitions and Standards for Drug Wholesale and Pharmacy Distributors **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1123–1124). 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 2—Practice and Procedure

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250, 392.240, 392.250, and 392.470, RSMo 2000, and 392.200, RSMo Supp. 2004, the commission adopts a rule as follows:

4 CSR 240-2.061 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2005 (30 MoReg 687–689). 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 16, 2005, and the public comment period ended May 15, 2005. Five (5) written comments were received and five (5) persons commented at the hearing. Written comments were received from Southwestern Bell Telephone, L.P., d/b/a SBC Missouri; CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel; the staff of the Missouri Public Service Commission; the Office of the Public Counsel; and jointly from Bill Hopkins, President of the Bollinger County Chamber of Commerce, Gary Shrum, Administrative Assistant to the City of Marble Hill, Bruce Johnson of The El-Nathan Home, and Joan Binnie. Persons commenting at the hearing were: Michael Dandino on behalf of the Public Counsel; John Van Eschen on behalf of the staff of the Missouri Public Service Commission; Craig Unruh on behalf of SBC Missouri; Arthur Martinez on behalf of CenturyTel and Spectra; and Larry Dority on behalf of ALLTEL Missouri, Inc. ALLTEL concurs in the written comments of CenturyTel and Spectra. The commenters questioned the commission's authority to go forward with the rule, the fiscal impact of the rule, and suggested changes to sections (2), (3), (5), (6), (7), (9), (11), (12), (13), (14), (15), and (16).

COMMENT: Bill Hopkins, President of the Bollinger County Chamber of Commerce, Gary Shrum, Administrative Assistant to the City of Marble Hill, Bruce Johnson of The El-Nathan Home, and Joan Binnie filed a joint written comment in support of the commission adopting a rule. The commenters stated that they believe expanded calling scopes are needed in rural areas.

RESPONSE: The commission thanks the commenters for their comment. The commission finds that the rule should be adopted as more fully set out below.

COMMENT: John Van Eschen testified on behalf of the staff of the Missouri Public Service Commission. Marc Poston and Natelle Dietrich also participated in the written comments and the drafting of the rule. Staff's comments were generally in support of the rule. Staff stated that a task force was set up by the commission in Case No. TW-2004-0471 for the purpose of investigating expanded local calling scopes. The task force's final report is included in the record. The task force recommended that the commission promulgate a rule that would create a process for the filing of applications to expand local calling scopes. Staff believes the proposed rule provides a "sufficient process" for the filing of applications to expand local calling scopes.

Mr. Van Eschen explained that in drafting the rule, staff made certain changes to the proposal of the task force. Mr. Van Eschen explained the deviations in the proposed rule. Mr. Van Eschen also testified about the prior history of expanded calling plan rules at the commission, stating that the extended area service (EAS) rule was not very successful in that very few, if any, new EAS routes were implemented under that rule while it was in existence.

Mr. Van Eschen testified that alternatives for expanded calling scopes have increased over the last ten (10) years to include wireless calling, prepaid calling cards, and other long distance calling plans. Mr. Van Eschen also testified that he expects the options to continue to increase. Mr. Van Eschen stated that the task force attempted to

examine expanded calling plans that were available on an exchange-specific basis but that the task force did not try to determine consumer interest through surveys or public hearings.

Mr. Van Eschen testified in response to a question by Commissioner Murray, that it may be helpful for the commission to have more evidence of a need for this rule and to determine the commission's authority to expand calling scopes before proceeding with the rule. The commission asked both of these questions of the task force, but the task force did not reach a conclusion about either of them.

RESPONSE: The commission notes that it has five (5) cases currently pending before it requesting expanded calling scopes. Those cases have been pending in one form or another for several years. In addition, the commission has reviewed the task force's final report recommending that a rule be adopted. Thus, the commission finds that it should not delay any further in establishing a process to handle this type of request. For those reasons and the reasons set out below, the commission determines that this rule should be adopted.

COMMENT: Michael Dandino, Senior Public Counsel, testified at the hearing on behalf of the Office of the Public Counsel and filed written comments. Mr. Dandino's comments were generally in support of the proposed rule because it establishes a process by which citizens can address their concerns regarding expanded calling scopes.

Mr. Dandino testified that in calendar years 2000 and 2001, seven hundred sixty (760) Wright City customers asked for expansion of the Metropolitan Calling Area (MCA) plan, two hundred fifty (250) Lexington businesses and residents asked for expansion of the Kansas City MCA, one hundred fifty (150) customers of SBC Missouri complained when SBC Missouri discontinued its local plus service, and customers in Greenwood, Ozark, and Rockaway Beach have all asked for expanded calling options. Mr. Dandino testified that without a rule in place, these requests have not had an adequate process within which to be heard. Mr. Dandino testified that this rule would at least put in place a process to give these requests timely and meaningful consideration.

Mr. Dandino cautioned that an attempt to fill in every gap in the rule could make the rule too complex to be easily used and understood by the general public. Mr. Dandino stated that the rule should provide for access to the commission and not be so cumbersome as to be an impediment.

Mr. Dandino testified that in past cases involving the MCA, the commission has not determined if it has authority to order expanded calling under price cap regulation and for competitive companies. He stated that the commission has also not determined whether expanded local calling scopes directed by the commission are a suitable remedy for the complaints and desires of consumers. Mr. Dandino argued that the commission has authority to determine and provide for just and reasonable expanded calling plans. Mr. Dandino also urged the commission not to abandon expanded calling scopes as a remedy until the companies prove that there are truly viable alternatives that give parity in rural areas, are priced reasonably, and are substitutable for MCA-type calling plans.

Mr. Dandino argues that the price cap statute does not affect expanded calling plan authority. Subsection 392.245.6, RSMo, (all statutory references are to the *Revised Statutes of Missouri* 2000, unless otherwise noted) provides that the price cap statute does not "alter the commission's jurisdiction over quality and conditions of service" and does not relieve companies from the obligation to comply with minimum basic local and interexchange service rules. The only restrictions are subsection 392.240.1, relating to rates being set based upon cost of service, and consideration of the rate of return under subsection 392.245.7. According to Mr. Dandino, price cap companies remain subject to the remainder of section 392.245.

RESPONSE: The commission agrees with the Office of the Public Counsel that it should not delay any further in establishing a process to handle requests for expanded calling scopes. The commission also determines, as set out more fully below, that it has jurisdiction to proceed with this rule. For those reasons and the reasons set out below, the commission determines that this rule should be adopted.

COMMENT: SBC Missouri filed written comments and testified at the hearing in opposition to the rule. SBC Missouri made the following arguments that the commission does not have jurisdiction to proceed with this rule.

SBC Missouri first argued that the rule violates the due process rights of the telecommunications companies because it does not guarantee a hearing before affecting the individual company's property rights. Proposed section 4 CSR 240-2.061(13) states that a hearing "may" be held. SBC Missouri argued that the rule must mandate a hearing.

SBC Missouri next argued that the rule violates section 392.200.9, RSMo Supp. 2004, because it mandates a revision to an exchange boundary without the consent of the affected telephone company.

SBC Missouri's third argument is that the rule violates section 392.245.11, RSMo, for price cap companies, because pricing and new service offering decisions should be left to the discretion of the price cap regulated company.

SBC Missouri's fourth argument is that the rule violates Missouri case law which holds that the commission's authority to regulate does not include the right to dictate the manner in which a company shall conduct its business.

Finally, SBC Missouri argued that the rule is not good public policy. SBC Missouri argues that in the competitive world the commission should not be mandating calling plans, especially where there are already numerous other options for expanded calling to meet the current customers' needs.

RESPONSE AND EXPLANATION OF CHANGE: The commission determines that it has jurisdiction to move forward with this rule because: 1) it has general supervisory jurisdiction over all telecommunications companies under section 386.250 and Chapter 392; 2) subsection 392.240.2 gives the commission the jurisdiction to "determine the just, reasonable, adequate, efficient and proper regulations, practices, equipment and service" of telecommunications companies; 3) the competitive companies are not exempt from section 392.470, which gives the commission authority to impose conditions on telecommunications companies that it deems reasonable and necessary; 4) section 392.250 grants the commission authority to order changes or additions to promote public convenience and adequate service; and 5) such expanded calling scopes would be consistent with the purposes of Chapter 392.

In the original MCA case, commission Case No. TO-92-306, the commission determined that it has the statutory authority under section 392.240 to set just and reasonable rates and the reasonable and sufficient service to be offered when the rates or service supplied by telecommunications companies is unreasonable, inadequate, or insufficient. The commission also determined that it has authority pursuant to section 392.250 to order repairs, improvements, changes, or additions to be made to promote the convenience of the public. In addition, the commission found that existing facilities and services did not meet the needs of customers. The commission set the expanded calling plans and ordered the local exchange companies to implement the plans to provide efficient and adequate service.

Later, the commission opened Case No. TO-99-483 to examine the provisioning of these expanded calling plans after the passage of the Telecommunications Act of 1996. The commission found that there was no evidence to suggest that the current plans and prices were not in the public interest. The commission also determined that it still had jurisdiction over those plans, even after the passage of the act.

The commission also opened Case No. TW-2004-0471 in order to further investigate calling scope issues. The task force set up in that

case filed a report, but did not address the question of the commission's authority. The task force did say that "legislative action may be necessary to address the needs . . . [of consumers.]"

With regard to the argument that section (13) should make a hearing mandatory, the commission finds that its obligation to provide adequate due process is not removed because the rule is permissive, rather than prescriptive. Under *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989), however, all that is required is that affected parties be given the opportunity for a hearing. Thus, by leaving the rule permissive, if there is agreement to the calling scope expansion or no hearing is requested, then the commission could proceed on the pleadings without necessarily holding a hearing. If a hearing is requested, or if there is no agreement, then the commission would hold a hearing. Thus, the rule as written does not violate the incumbent local exchange carriers' due process rights.

SBC Missouri also argues that the rule violates subsection 392.200.9, RSMo Supp. 2004, because the rule mandates a revision to an exchange boundary without the consent of the affected telephone company. This argument is not persuasive because this rule does not change an exchange boundary. Any calling scope expansion resulting from this rule would be accomplished either with the agreement of the local exchange carrier or, more likely, by including whole exchanges in the expanded calling scopes without altering those exchange boundaries.

SBC Missouri further argues that by modifying the MCA plans, the commission would be usurping the companies' management decisions in violation of Missouri case law. The Missouri Western District Court of Appeals, however, rejected this argument in the appeal of the commission's original order implementing the MCA plan. *State of Missouri, ex rel. MoKan Dial, Inc. v. P.S.C.*, 897 S.W.2d 54 (Mo. App. 1995). The court stated that it did not "see how [a]ppellants' management functions have been damaged." *Id.* The court also stated that subsection 392.240.1 "invests the commission with authority to revise and set reasonable rates for tolls and other services when customer needs are not being met and service is inadequate." *Id.* at 55.

Finally, SBC Missouri argues that the rule is not good public policy. The task force stated in its report that there was still a need for a rule to process these types of applications. Michael Dandino on behalf of the Office of the Public Counsel also testified that in rural areas and other places where competition is not strong there may still be a need for the commission to direct these types of expanded calling plans. In addition, the commission received a written comment from telecommunications users stating that expanded calling scopes were necessary. Further, the commission notes that it currently has pending before it five (5) applications for expanded calling areas. Thus, there has been sufficient interest in at least five (5) instances to start proceedings, yet there is no set procedure for the commission to follow in processing these types of applications. By going forward with the rule, the commission will be setting up a procedure for handling these cases more efficiently and expeditiously. The commission finds that it is good public policy to have a procedure in place to deal with these types of applications.

After reviewing all the evidence in this rulemaking record, the commission determines that, depending on the specific factual circumstances, it has authority under the above-mentioned sections of Chapters 386 and 392 to continue to order all telecommunications companies to offer expanded calling scopes. Furthermore, the *MoKan Dial* case provides support for this commission's authority. SBC Missouri has not convinced the commission that it should not move forward with this rule. Therefore, the commission finds that it should continue with this rulemaking, as recommended by the task force, so that there is a clear process in place to promote the efficient processing of these applications and to safeguard the rights of both the telecommunications customers and the telecommunications companies within this state.

No change to the rule text is made as a result of this comment; however, the commission will include additional statutory citations in the authority section of the rule.

COMMENT: CenturyTel and Spectra (collectively referred to as "CenturyTel") filed joint comments and testified at the hearing. (ALLTEL Missouri concurred in the written comments of CenturyTel and Spectra and thus where the commission refers to CenturyTel's written comments it is also referring to ALLTEL's concurrence in these comments.) Generally, CenturyTel's witness, Mr. Martinez, stated that he believed the commission went beyond the recommendations of the task force and should withdraw the rule. Mr. Martinez also stated that the commission may not have the authority to prescribe MCA calling scopes and that doing so may contradict Missouri case law that prohibits the commission from dictating management decisions of certain companies. CenturyTel stated in its written comments that the requirement for a hearing in section (13) should be mandatory to protect the carriers' due process rights.

In response to questions from Commissioner Murray at the hearing, Mr. Martinez stated that he is aware of a "vocal minority" that is interested in expanded calling around the Rockaway Beach community, but that he is not aware that the sentiment is shared by the Branson community. Mr. Martinez also testified that there are wireless providers, prepaid calling cards, and flat-rated calling plans that are options for expanded calling in many areas.

Mr. Martinez further testified that if MCA plans are approved under the rule, that anyone taking advantage of the change (or being forced to change in the case of a mandatory MCA) would have to change his or her phone number. Because of the many alternatives available, Mr. Martinez does not believe it would ever be in the public interest to grant one of these applications. Mr. Martinez testified that he thinks the rule will create false hopes because consumers have no idea how much it costs the companies to provide these types of plans.

RESPONSE: The commission has responded above to the question of the commission's jurisdiction to proceed with this rule. The commission has also previously found that going forward with this rule is in the public interest. Further, the commission has found that the hearings in these cases should not be made mandatory, as there are certain instances when a hearing would not be necessary.

With regard to educating the general public that certain changes in calling scopes will necessitate changing phone numbers, the rule offers the opportunity for meetings between the applicants and the telecommunications carrier as well as public hearings. In making a public interest determination, the commission will most likely have to consider on a case-by-case basis how well the affected customers understand numbering requirements.

The commission is aware of many alternatives available to telecommunications consumers in the current competitive environment. The commission is also aware, however, that it currently has five (5) pending cases requesting expanded calling scopes. In addition, the findings of the task force and the comments of the Office of the Public Counsel suggest that a need for this rule exists. Thus, the commission determines that it should go forward with this rule.

COMMENT: Larry Dority testified at the hearing in opposition to the rule on behalf of ALLTEL Missouri, Inc. Mr. Dority concurred in the written comments of CenturyTel. In addition, Mr. Dority testified that it was premature to move forward with this rule. Mr. Dority argued that the commission should work through the pending calling scopes cases before going forward with this rule. Mr. Dority stated that he believes competition will meet customers' needs. Mr. Dority further testified that when an agency tries to make rules instead of allowing competition to govern, some companies will be at a competitive disadvantage.

RESPONSE: The commission determined above that it has the authority to promulgate this rule and that doing so would be in the public interest.

COMMENT: SBC Missouri commented that the commission's statement that no fiscal note is needed is inaccurate because the rule would cost private entities more than five hundred dollars ($500) in the aggregate. SBC Missouri states that there will be costs involved in evaluating the proposed calling plan, as well as determining a cost of the proposed plan. CenturyTel also commented that the filing of illustrative tariffs and supporting documents in sections (11) and (12) of the rule create a fiscal impact to private entities.

RESPONSE AND EXPLANATION OF CHANGE: Discussions of the MCA plan and expanded calling scope issues have taken place at the commission, during local public hearings, and within the industry for many years. Because of these discussions, inquiries from the Office of the Public Counsel, and comments from numerous consumers, the commission set up the task force in Case No. TW-2004-0471. The task force was made up of industry personnel, legislators, consumers, the Office of the Public Counsel, and the staff of the Missouri Public Service Commission. The task force met on five (5) separate occasions to discuss calling scope issues and subcommittees met on two (2) other occasions. The task force concluded with the filing of its final report in which it recommended the current rulemaking, including that the commission get information from the affected companies on the financial costs of any proposed plans.

No potential fiscal impact of the rule was discussed during the task force meetings or was included as part of the task force's final report. Thus, when proposing this rule, the commission determined that the rule would not cost more than five hundred dollars ($500) in the aggregate to private entities. The commenters, however, bring to the commission's attention that by requiring the filing of illustrative tariffs and supporting documents, the companies will necessarily have expenses in determining their cost to implement the proposal.

The commission notes that five (5) calling scope expansion cases are proceeding at the commission under general commission procedures without any specific rule in place. Under those cases, the companies are being required to determine their costs in providing the expanded service, because without that information the commission cannot make a public interest determination. The commission determines that it is in the public interest to have a uniform procedure for the processing of these types of applications. Thus, the commission finds that it should proceed with this rulemaking.

The commission has revised its fiscal note to account for the costs to the companies of complying with the rule. The commission made several assumptions about the number of cases expected and used cost estimates provided by some potentially affected companies.

COMMENT: Mr. Martinez on behalf of CenturyTel commented that the rule should set out specific criteria for determining a community of interest. Mr. Martinez did not suggest any specific criteria for the commission to adopt. Mr. Van Eschen on behalf of the staff of the Missouri Public Service Commission testified that the definition of "community of interest" in subsection (1)(B) is the definition anticipated by the task force.

RESPONSE: The task force recommended the definition as set out in the proposed rule. In addition, the task force specifically stated in its final report at subparagraph G.2, "Out of necessity, the communities of interest criteria cannot be reduced to simple descriptions, rules or numbers, but shall remain a matter of some subjectivity for the commission to determine on a case-by-case basis." Because the definition is as the task force intended it to be, the commission determines that no change to this subsection is needed.

COMMENT: SBC Missouri and CenturyTel commented that section (2) of the rule should include a requirement that if the application is filed by a group of individuals, those individuals must be represented by an attorney under sections 484.010 and 484.020, RSMo. Staff testified in favor of requiring an attorney to represent a group of individuals so that the Office of the Public Counsel is not faced with a potential conflict of interest by attempting to represent the needs of a small group of customers. Staff commented that no change is necessary because the rule requires applications to be filed in compliance with rule 4 CSR 240-2.060 which would require a Missouri attorney must represent these individuals.

RESPONSE: Although commission rule 4 CSR 240-2.060 does not require a Missouri-licensed attorney, it requires the signature of an authorized representative. Sections 484.010 and 484.020 require that no individual can represent another individual unless that person is a Missouri-licensed attorney. Thus, under current Missouri law, a Missouri-licensed attorney will be required to represent a group of individuals. The commission determines that it need not repeat in its rules the specific requirements of Missouri law. Therefore, the commission finds that no change to the rule is necessary as a result of this comment.

COMMENT: SBC Missouri commented that subsections (2)(A) and (3)(F) are not clear as to whether the fifteen percent (15%) criterion includes all incumbent and alternative local exchange company subscribers. SBC Missouri and CenturyTel both commented that the applicants would not have access to necessary information to determine the fifteen percent (15%) threshold. They also commented that it was not clear how that threshold or the signatures would be verified.

SBC Missouri suggests that the threshold should be based on subscribers to residential basic local service and that it should be at least thirty percent (30%). CenturyTel also commented that the applicants will not have access to other information required such as the rate and type of plan. CenturyTel made this latter argument with regard to subsections (2)(B) and (3)(C), (D), and (E). CenturyTel also commented that it will be difficult for the applicants to obtain this information because the incumbent local exchange companies (ILECs) are not involved in the application process until sixty (60) days after the filing of the application.

Mr. Van Eschen testified that in his opinion, fifteen percent (15%) is a significant number of subscribers to express an interest and that fifteen percent (15%) was the number recommended by the task force. Mr. Van Eschen also testified that subsection (3)(F) allowing only one (1) signature per subscriber on the application is consistent with the suggestions of the task force report.

RESPONSE AND EXPLANATION OF CHANGE: The task force recommended the fifteen percent (15%) threshold so that applications for increased calling scopes would require a substantial number of interested persons, yet the rule would not be so burdensome as to exclude investigation into expanded calling scopes entirely.

The companies have an opportunity to object to the applications and will thus have the opportunity to question the validity and number of signatures. The information requested in subsections (2)(B) and (3)(C), (D) and (E) is information that only the applicants can provide. These subsections set out the plan the applicants are proposing. No changes are needed to these subsections. The commission agrees that subsections (2)(A) and (3)(F) should be clarified to state that the criterion is fifteen percent (15%) of the *incumbent* local exchange carrier subscribers. Subsections (2)(A) and (3)(F) will be amended.

COMMENT: SBC Missouri objected to the inclusion of subsection (2)(B) allowing any governing body of a municipality or a school board to propose a plan without showing that customers want and are willing to pay for the service.

RESPONSE: The task force recommended that any governing body of a municipality or a school board be allowed to be an applicant. SBC Missouri appears concerned that these governing bodies will have insufficient knowledge of whether their constituents will want or be willing to pay for expanded calling scopes. The commission makes the contrary determination. Local governing boards are better situated to know the wants and needs of the communities of interest surrounding them. Therefore, the commission finds that no change to this subsection should be made.

COMMENT: SBC Missouri commented that a new section should be added to require that in an application for a mandatory plan, the applicants must provide evidence that at least thirty percent (30%) of the subscribers to residential service not currently subscribing to the MCA plan are willing to subscribe to the service at a compensatory price.

RESPONSE: The task force recommended the fifteen percent (15%) threshold so that applications for increased calling scopes would require a substantial number of interested persons, yet the rule would not be so burdensome as to exclude investigation into expanded calling scopes entirely. Furthermore, the applicant may not at the time of application have sufficient information to determine a "compensatory price." Therefore, the commission finds that it should not alter the recommendation of the task force on this point. Rather, the number of interested persons willing to pay the compensatory price is likely to be a fact put forth in evidence as the case progresses and after illustrative tariffs are filed which set forth a compensatory price.

COMMENT: SBC Missouri commented that section (2) should be amended so that applicants seeking a change to MCA service that will add a new exchange to the MCA plan must provide evidence that the customers are willing to change their telephone numbers in order to subscribe to MCA service.

RESPONSE: The task force did not recommend this added criterion for applications. The rule provides for additional public input, such as public hearings, as the process progresses. The willingness of customers to change their phone numbers will likely depend on the calling scope and price for the service. Because these items may change as the applicants and the company meet and exchange information and after the illustrative tariffs are filed, the commission determines that providing this information with the initial application would be premature. Therefore, no changes to this section are needed as a result of this comment.

COMMENT: SBC Missouri commented that subsection (2)(G) should be amended to require the applicants to advise the commission of the competitive alternatives that are available in the community and why those alternatives are inadequate. Mr. Van Eschen testified that subsection (3)(B), requiring that the application include a statement explaining how the proposed plan will satisfy the objectives of the community of interest, will provide the commission with information from the applicants' point of view as to how the request will address the applicants' needs. Mr. Van Eschen testified that section (4) was added by staff during the drafting of the rule to ensure that each person is aware of the terms of the requested plan when signing the application.

RESPONSE: The commission finds that the public may not be aware of all of the competitive alternatives. It may be this very lack of knowledge that drives an applicant to request an expanded calling scope. Under the procedure set out in the rule, the companies have an opportunity to meet with the applicants, at which time the company may want to educate the applicants about alternatives. In addition, the company is free to include information about alternatives in its response to the applicants' final recommendation and, if necessary, present evidence of these alternatives at a hearing. Furthermore, subsection (3)(B) already requires that the applicants state how the plan will satisfy the needs of the community of interest. For these reasons, the commission determines that no change to this subsection is needed as a result of this comment.

COMMENT: SBC Missouri commented that section (5) should be amended to require that the commission give notice to prepaid local and interexchange carriers (IXCs) in the same manner as provided to the local exchange carriers. Mr. Van Eschen testified that because of the large numbers of IXCs, the rule provides for those companies to get only electronic notice of the applications. Mr. Van Eschen pointed out that because the commission's electronic filing and information system (EFIS) database may not have completely up-to-date e-mail addresses for the approximately six hundred (600) IXCs certificated in the state, not all IXCs will receive notice if this method is utilized. Staff still recommends that IXCs receive notice electronically.

RESPONSE AND EXPLANATION OF CHANGE: The commission determines that SBC Missouri is correct that prepaid providers should be given notice of the application since their calling scopes may be affected by the application. Therefore, the commission will amend section (5) to provide notice to prepaid providers.

COMMENT: SBC Missouri commented that section (6) should be amended to require that all carriers, not just incumbent local exchange carriers, serving exchanges that are affected by the proposal would be automatically made a party to the case. Staff commented that in drafting the rule it limited the entities that were automatically made a party to the case to only the ILECs. Staff stated in its written comments that the commission does not have a means to easily identify where competitors, such as Voice over Internet Protocol (VoIP) providers and wireless carriers are operating.

RESPONSE: Because of the large numbers of certificated (approximately six hundred (600) IXCs alone) and noncertificated carriers within the state, it would be too cumbersome and inefficient to automatically make each carrier serving an exchange a party to the case. It would also be extremely costly for each party to have to serve its filings on that many additional parties. The rule provides for intervention of interested parties and therefore, the commission determines that no changes to this rule as proposed are needed as a result of this comment.

COMMENT: SBC Missouri commented that the time for convening a conference of the parties is too restrictive and should be extended from sixty (60) days to one hundred twenty (120) days. Staff provided written comments stating that the provision requiring the parties to meet to discuss certain items within sixty (60) days of the filing of the application does not prohibit the parties from exploring alternative intercarrier compensation arrangements for other types of proposals. The provision also does not require the parties to agree to alternative intercarrier compensation arrangements that do not involve access charges; it simply places an expectation on the parties to seriously consider intercarrier compensation arrangements that do not involve access charges. Staff supports the section as written.

RESPONSE: One purpose of promulgating this rule is to create a procedure to more efficiently and expeditiously process applications for expanded calling scopes. The initial meeting will allow the parties to discuss the merits of the application and whether there are alternative solutions. It is not expected that the telecommunications carriers will have all the costs and details to the plan worked out at this first meeting. Rather, this meeting allows the applicants to determine if changes to its proposal are required. For these reasons, the commission determines that no changes to section (7) are needed.

COMMENT: CenturyTel commented that section (9) be amended to include a deadline for the filing of a statement that the application remains unchanged or identifying the modifications requested. No specific changes were suggested.

RESPONSE: The commission disagrees that any change should be made. Applications before the commission may already be dismissed for failure to prosecute under 4 CSR 240-2.116(2) if no action is taken in ninety (90) days. Because the applicants are responsible for pursuing the application and the carriers are not required to make any further filings under the rule until the applicants' final recommendation is filed, the carriers suffer no harm by the applicants failing to present their final recommendation in a timely fashion. For these reasons the commission determines no change to section (9) is needed as a result of this comment.

COMMENT: CenturyTel suggests that the ten (10) days allowed in section (10) may not be adequate time for response to the applicants' final recommendation. No alternative time period was suggested.

RESPONSE: In order to ensure that the case is not delayed unreasonably, the commission determines that the ten (10)-day deadline is sufficient. Ten (10) days for responses is the commission's standard response period. In addition, the responding party may request additional time if necessary. The commission finds that no change is needed as a result of this comment.

COMMENT: SBC Missouri and CenturyTel commented that the commission should add a provision that requires the commission to rule on any objections to the final recommendations before the ninety (90)-day period set out in section (11) starts to run. SBC Missouri suggests that the commission issue an order determining that the requisite numbers of subscribers have filed the application and that there is sufficient evidence of a lack of competitive alternatives, which would satisfy the applicants' needs, before the phone companies are required to file illustrative tariffs. Staff, in its written comments, opposed adding an additional step whereby the commission would evaluate the merits of the application before the filing of illustrative tariffs. Staff stated that the commission cannot make an informed decision until it has information about revenue and expense requirements. SBC Missouri also suggests that sections (11) and (12) be amended to require that telecommunications carriers file proposed tariff sheets offering a calling plan that would meet the applicants' needs rather than tariff sheets that would implement the plan proposed by the applicants.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with its staff that it cannot evaluate the merits of the proposal until after all the evidence, including the illustrative tariffs, is filed. The commission finds, however, that it should rule on objections to the technical sufficiency of the application before the telecommunications carrier spends its resources preparing illustrative tariffs and determining the cost of the proposal. For this reason, the commission determines that it should amend section (11) to state that the illustrative tariffs are due ninety (90) days after the issuance of an order by the commission ruling on any objections as to the technical sufficiency of the application.

The commission determines that it should not amend the section to allow the carrier to provide tariffs that "meet the applicants' needs" rather than tariffs which "implement the proposal." It is the applicant's proposal and, therefore, the commission will be ruling on the merits of that proposal after all the evidence, including a hearing if necessary, have been presented. If the illustrative tariffs provided do not actually present the proposal suggested by the applicants, the commission cannot properly evaluate the merits of the application. For this reason, the commission will not adopt this particular change proposed by SBC Missouri.

COMMENT: CenturyTel suggested that the ninety (90)-day deadline in section (11) may not be adequate. No alternative time period was suggested.

RESPONSE: No other carrier commented that this time period was not sufficient if the commission promptly ruled on objections to the proposal. The commission finds that ninety (90) days as set out in its amended section (11) is sufficient. No change will be made as a result of this comment.

COMMENT: SBC Missouri suggests that the public hearings in section (13) should be mandatory.

RESPONSE: The commission agrees with SBC Missouri that input from the public regarding expanded calling scopes will be desired in almost every instance. The commission finds, however, that the proposed rule should not be changed so that in the unusual circumstance where all parties are in agreement, no hearing would necessarily have to be held. Therefore, no changes to section (13) will be adopted.

COMMENT: SBC Missouri comments that the provision of evidence in section (14) should be voluntary.

RESPONSE: Without the provision of evidence by the parties, the commission will have nothing upon which to base its decision. Therefore, the commission determines that no change to section (14) is needed as a result of this comment.

COMMENT: SBC Missouri suggests that section (15) be amended to include a requirement that the commission consider competitive offerings when making its decision.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that competitive offerings will be a factor it considers when determining whether calling scopes should be expanded. For this reason, the commission agrees with SBC Missouri that section (15) should be amended to include consideration of competitive alternatives.

COMMENT: Staff proposes that section (16) be revised to address any concerns that the commission might make a decision to modify an application without evidence in the record to support the modification.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that staff's proposed change will clarify that the commission will only make decisions supported by the evidence in the record. Therefore, the commission will adopt section (16) as amended by staff's proposed change.

4 CSR 240-2.061 Filing Requirements for Applications for Expanded Local Calling Area Plans Within a Community of Interest

(2) An application filed with the commission shall initiate a request for an expanded local calling area plan. The specific provisions herein shall supersede general rules contained elsewhere in this chapter. An application may be filed on behalf of:

(A) At least fifteen percent (15%) of the incumbent local exchange telecommunications service subscribers within the requesting exchange; or

(B) A governing body of a municipality or school district within the requesting exchange.

(3) The application shall comply with 4 CSR 240-2.060 and shall clearly identify and include:

(A) A description of the expanded local calling area plan;

(B) A statement explaining how the proposed plan will satisfy the objectives of the community of interest;

(C) The proposed price and terms of the plan;

(D) A statement of whether the proposed plan will be optional or mandatory for all customers in the expanded local calling scopes;

(E) A statement as to the toll or local classification of the calling plan traffic and associated inter-company compensation, if any, to be utilized to facilitate the plan; and

(F) A petition, if initiated by incumbent local exchange service subscribers as described in subsection (2)(A) above, which shall include the signatures of such subscribers, and only one (1) signature per subscriber is allowed.

(5) The commission will provide notice of the filing of the application to all local exchange telecommunications companies in the affected area. The filing of the application will initiate an Electronic Filing and Information System (EFIS) notification to all interexchange telecommunications carriers. All notifications shall include instructions on how to obtain a copy of the application.

(11) Within ninety (90) days after the commission issues an order ruling on objections to the technical sufficiency of the application or, if none, within ninety (90) days after the filing in section (9) above, any

telecommunications carrier directly affected by the proposal shall file illustrative tariff sheets to implement the applicant's proposal.

(15) The commission, in its findings, will determine whether the proposed calling plan is just, reasonable, affordable, and in the public interest. In making these determinations, the commission will consider evidence on the competitive alternatives available, competitive implications, revenue impacts, and company and social costs of implementing the proposed expanded calling plans balanced against the objectives of the community of interest. The commission will also weigh any costs against benefits to the community of interest when making its determination.

(16) Based on the evidence in the record, the commission may modify the proposed rates, terms or conditions in its decision on the application.

AUTHORITY: sections 386.250, 392.240, 392.250, and 392.470, RSMo 2000, and 392.200, RSMo Supp. 2004. Original rule filed March 4, 2005.

REVISED PRIVATE COST: The commission estimates that this rule will have a fiscal impact on private entities of two hundred two thousand five hundred dollars ($202,500) in the aggregate over the next five (5) years.

REVISED FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	4 CSR 240-2.061 Filing Requirements for Applications for Expanded Local Calling Area Plans Within a Community of Interest
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification* by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
4	Class A Local Telephone Companies	$127,500
37	Class B Local Telephone Companies	$75,000

* Class A Telephone Companies are incumbent local telephone companies with more than $100,000,000 annual revenues system wide and Class B Telephone Companies are incumbent local telephone companies with $100,000,000 annual revenues or less system wide.

III. WORKSHEET

Year 1: 4 applications filed X ($8,500 for 1 large company + $5,000 for 1 small company) = $54,000.

Year 2: 4 applications filed X ($8,500 for 1 large company + $5,000 for 1 small company) = $54,000.

Year 3: 3 applications filed X ($8,500 for 1 large company + $5,000 for 1 small company) = $40,500.

Year 4: 3 applications filed X ($8,500 for 1 large company + $5,000 for 1 small company) = $40,500.

Year 5: 1 application filed X ($8,500 for 1 large company + $5,000 for 1 small company) = $13,500.

$54,000 + $54,000 + $40,500 + $40,500 + $13,500 = $202,500 for all companies in the aggregate.

IV. ASSUMPTIONS

1. Information available to the Commission at the time the proposed rule was filed indicated that private entity costs were not greater than $500 in the aggregate. As a result of the comments, the Commission has determined that private entities would have a fiscal impact greater than $500 in the aggregate.

2. Applications filed under this rule will request expanded calling scopes for incumbent local exchange companies and not for competitive local exchange companies. Some incumbent local exchange companies have reviewed the proposed rule and have provided estimates of the fiscal impact. The above information is based on those estimates.

3. Fiscal year 2005 dollars were used to estimate costs. No adjustment for inflation is applied.

4. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission rules and regulations.

5. Large and small incumbent local exchange companies will respond to identical numbers of applications per year. One large and one small incumbent local exchange company will respond to each application filed at the Commission. Only one exchange will be the subject of each application.

6. The cost per application to comply with Sections (11) and (12) for a large incumbent local exchange company will be $8,500. The cost per application to comply with Sections (11) and (12) for a small incumbent local exchange company is $5,000. These figures are based on estimates provided by several incumbent local exchange companies.

7. That due to changes in technology and the competitive environment, after five years the rule will become obsolete. This is based on comments received that numerous alternatives are available for expanded calling scopes and that because of changing technology and competition new alternatives will become available replacing traditional expanded calling scope plans.

8. That four applications per year will be filed for the first two years, that three applications will be filed in the third and fourth years, that one application will be filed in the fifth year and that no more applications will be filed under this rule. The Commission makes these assumptions based on the fact that the Commission has had five requests for expanded calling scopes filed in the past five years and that the companies estimate they will respond to approximately four requests per year for the first few years with the number decreasing after that.

9. That a majority of requests have already been filed with the Commission.