

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

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

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

ORDER OF RULEMAKING

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

4 CSR 240-3.545 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2010 (35 MoReg 209-210). The sections with changes are reprinted here. The proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended March 5, 2010, and a public hearing on the proposed amendment was held March 8, 2010. Timely written comments were received from the staff of the Missouri Public Service Commission and from AT&T Missouri. In addition, the commission's staff and AT&T Missouri offered comments at the hearing. The comments generally supported the proposed amendment, but AT&T and staff proposed certain modifications to the amendment.

COMMENT #1: Changes to section (16) in general: The commission's staff offered a written comment that explains that under the commission's existing rule, a telecommunications company that wants to file a tariff to introduce or revise any competitive service

must file a tariff with the commission at least thirty (30) days before that tariff becomes effective. In 2008, the Missouri General Assembly amended section 392.200.12, RSMo, to allow such tariffs to be filed with one (1) day's notice for tariffs that reduce rates and ten (10) days' notice for tariffs that would increase rates. Staff explains that its general purpose in amending the regulation is to bring the regulation into compliance with the requirements of the statute. AT&T Missouri supports that general purpose.
RESPONSE: The commission will not change this aspect of the amendment.

COMMENT #2: Changes to the heading of section (16): The proposed amendment would remove a reference to tariff filings made pursuant to section 392.500, RSMo, and replace it with a more general reference to tariff filings that change rates for services. AT&T Missouri supports changing the heading, but would change the heading to "Requirements for Tariff Filings that Change Rates, Terms and Conditions for Services." The important distinction is that AT&T would add a reference to tariff filings that change terms and conditions for services. The commission discusses that distinction in detail at comment #5.

RESPONSE: As explained in comment #5, the commission will not add a section making the rule apply to tariff filings that change terms and conditions without increasing or decreasing rates. Therefore, the commission will not modify the revised heading found in the proposed amendment.

COMMENT #3: Changes to subsection (16)(A): Staff's comment proposes to modify two (2) aspects of the proposed amendment to this subsection. The first sentence of the proposed amendment refers to proposed increases in "individual" rates. Staff explains that the term "individual rates" is intended to refer to rates for services that are not offered as part of a larger package. It is concerned that using the term "individual rates" could confuse readers into believing that the rule applies to rates offered to individual customers. For that reason, staff proposes to change the amended language to refer to increases in rates offered on an "*a la carte* basis." AT&T Missouri does not oppose that change.

Staff also proposes to remove the last sentence of the proposed amendment to this subsection because that requirement is already contained in other commission rules and does not need to be repeated in this section. AT&T Missouri supports that modification.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff's comment and will modify the amendment in the manner proposed by staff.

COMMENT #4: Changes to subsection (16)(B): Staff again proposes to replace the "individual" language of the proposed amendment with the *a la carte* phrase used in subsection (16)(A). AT&T Missouri supports that modification.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with staff's comment and will modify the amendment in the manner proposed by staff.

COMMENT #5: Changes to existing subsection (16)(C): The proposed amendment would remove the entirety of existing subsection (16)(C), which requires a telecommunications company to file a thirty (30)-day tariff to introduce or revise the terms and conditions of any competitive service. AT&T Missouri points out that the removal of this subsection leaves a gap in the rule. Subsection (16)(A) requires a telecommunications company to file a ten (10)-day tariff if it wants to increase rates. Subsection (16)(B) allows the company to file a one (1)-day tariff to decrease rates. But the proposed amendment does not indicate what kind of tariff should be filed if the company wants to change a term or condition in the tariff without either increasing or decreasing rates.

AT&T Missouri would fill that gap with a new subsection (16)(C) that states:

The commission shall be notified at least ten (10) days in advance of a proposed introduction or revision of any classification or tariff resulting in neither an increase or decrease in rates or charges for competitive telecommunications services on an *a la carte* basis. Commission notice shall be in the form of a tariff filing with a proposed effective date that is at least ten (10) days after the tariff has been filed.

Staff acknowledges the existence of the gap described by AT&T Missouri, but indicates that its intent is to create a rule that mirrors the provisions of House Bill 1779, which contains the same gap.

To avoid the ambiguity that would result from the existence of the gap, staff proposes to retain a modified version of section (18) of this rule, which would be eliminated in the proposed amendment. Staff's revised section (18) would state:

Except as otherwise provided in this rule, no tariff will be accepted for filing unless it allows the full thirty (30) days required by law from date of receipt until effective date.

Thus, staff would retain the thirty (30)-day tariff requirement for tariffs that change terms and conditions of service without either increasing or decreasing rates. Staff reasons that changes to terms and conditions can be quite complicated and its review of such changes can be time consuming. Therefore, absent a statutory mandate to allow a shorter time, staff would retain the thirty (30)-day tariff requirement.

AT&T Missouri concedes that the controlling statute does not require a less than thirty (30)-day period, but argues that the clear intent of the legislature in recent years has been to reduce the delays resulting from regulation of competitive services. In that light, a ten (10)-day tariff requirement for tariffs that change terms and conditions of service would be in line with the intent of the legislature. In addition, a ten (10)-day tariff requirement for such tariff changes would reduce the risk that staff and a telecommunications company will disagree about whether a particular tariff will have an effect on rates, and thus can go into effect on one (1) or ten (10) days' notice, or whether that tariff is merely changing terms and conditions, and thus requires thirty (30) days' notice.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with its staff. The commission is not willing to relinquish the time necessary to fully review tariff changes without a clear legislative mandate to do so. The commission will not include the new subsection (16)(C) proposed by AT&T Missouri, but will include the modified section (18) proposed by staff. The rest of the amended rule will be renumbered accordingly.

COMMENT #6: Changes to subsection (16)(C) of the proposed amendment. The proposed amendment would create a new subsection (16)(C) that deals with tariffs that offer packages of services. AT&T supports the new language of the subsection, but would renumber the section as subsection (16)(D) since it would create a different subsection (16)(C).

RESPONSE: The commission will not modify this section of the proposed amendment.

COMMENT #7: Changes to subsection (16)(D) of the proposed amendment. The proposed amendment would create a new subsection (16)(D) to govern promotional offerings. The new subsection (16)(D) would incorporate and replace section (19) in the existing rule. The new subsection would allow promotional tariffs to become effective on one (1) day's notice, instead of the seven (7) or ten (10) days' notice required by the existing rule.

AT&T Missouri generally supports the new subsection but opposes inclusion of a portion of the last sentence, which states: "[promotions] must be offered in a nondiscriminatory manner." AT&T

Missouri explains that the controlling statute, section 392.200.11, RSMo, specifically indicates that the "undue or unreasonable" discrimination prohibitions found in section 392.200.3, RSMo, do not apply to promotional offerings. Furthermore, AT&T Missouri contends promotional offerings are by their nature discriminatory in that the company is offering a special rate to attract a special group of customers. Since the statute specifically allows telecommunications companies to offer discounted rates or special promotions, the nondiscriminatory language cannot apply. Finally, AT&T Missouri argues that the commission should not attempt to evaluate whether the promotions statute is subject to an anti-discrimination analysis in this rulemaking.

Staff responds by pointing out that the non-discrimination phrase has been in the regulation for years and contends AT&T Missouri has not demonstrated a good reason to remove it. Staff concedes that a telecommunications company does not have to offer discounts and promotions to all its customers and can pick and choose which customers are eligible to receive such discounts and promotions.

RESPONSE: It is not clear to what extent a telecommunications company must comply with the undue or unreasonable discrimination provisions of section 392.200.3, RSMo, when offering a promotional tariff to some of its customers. But AT&T has not shown a good reason not to include the anti-discrimination language in the regulation. The commission will not make the change proposed by AT&T.

COMMENT #8: All other provisions of the amendment: Staff offered comments explaining the other changes contained in the proposed amendment. AT&T Missouri did not oppose any of those changes.

RESPONSE: The commission will not modify the remaining sections of the proposed amendment except to renumber those sections as necessitated by other changes.

4 CSR 240-3.545 Filing Requirements for Telecommunications Company Tariffs

(16) Requirements For Tariff Filings That Change Rates For Services.

(A) The commission shall be notified at least ten (10) days in advance of a proposed increase in rates or charges or a proposed change in any classification or tariff resulting in an increase in rates or charges for competitive telecommunications services available on an *a la carte* basis. Commission notice shall be in the form of a tariff filing with a proposed effective date that is at least ten (10) days after the tariff has been filed.

(B) The commission shall be notified at least one (1) day in advance of a proposed decrease in rates or charges or a proposed change in any classification or tariff resulting in a decrease in rates or charges for competitive telecommunications services available on an *a la carte* basis. Commission notice shall be in the form of a tariff filing with a proposed effective date that is at least one (1) day after the tariff has been filed.

(18) Except as otherwise provided in this rule, no tariff will be accepted for filing unless it allows the full thirty (30) days required by law from date of receipt until effective date.

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

must notify its customers at or before the next billing cycle of any name change affecting customer recognition of the company and file a copy of that notice with the adoption notice.

(20) All telecommunications companies shall update the commission's electronic filing system with the current name, address, telephone number, and email address for the regulatory contact person within the telecommunications company within ten (10) business days of when changes occur.

(21) Waivers regarding compliance with the requirements of this rule granted under previously used rule numbers such as 4 CSR 240-30.010(2)(C) will continue in effect unless otherwise ordered by the commission.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 33—Service and Billing Practices for
Telecommunications Companies**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.040, 386.250, 392.185(9), and 392.470, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-33.160 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2010 (35 MoReg 210). The section with changes is reprinted here. The proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended March 5, 2010, and a public hearing on the proposed amendment was held March 8, 2010. Timely written comments were received from the staff of the Missouri Public Service Commission and from AT&T Missouri. In addition, the commission's staff and AT&T Missouri offered comments at the hearing. The comments generally supported the proposed amendment, with one (1) modification that both the commission's staff and AT&T Missouri support.

COMMENT #1: Modification of Time to File CPNI Report: The commission's staff offered a written comment that explains that the commission's existing rule requires all telecommunications companies to submit a customer proprietary network information (CPNI) report by March first of each year. The amendment would make it easier for telecommunications companies to comply with this requirement by allowing them to incorporate the CPNI report into their broader annual report to the commission. No comments opposed this aspect of the proposed amendment.

RESPONSE: The commission will not change this aspect of the amendment.

COMMENT #2: Option to Attach a Copy of CPNI Filing to the FCC: The commission's staff's written comment explained that the proposed amendment would also allow some telecommunications companies to comply with the state CPNI filing requirement by submitting a copy of the CPNI filing those companies are already filing with the Federal Communications Commission (FCC). However, the proposed amendment would allow a telecommunications company to comply with the state requirement by attaching a copy of the FCC filing only if the company does not share CPNI with joint venture partners or independent contractors (except for billing and collection services).

AT&T Missouri's written comment contends the rule's exception should be expanded to allow a telecommunications company to attach a copy of the FCC CPNI filing to comply with the state filing requirement if it shares CPNI with joint venture partners or independent contractors for otherwise permitted activities, beyond simply billing and collection services.

At the hearing, the commission's staff and AT&T Missouri agreed that the amendment should be modified to expand that exception. **RESPONSE AND EXPLANATION OF CHANGE:** The commission will modify the amendment in the manner agreed to by the commission's staff and AT&T Missouri.

4 CSR 240-33.160 Customer Proprietary Network Information

(7) Safeguards Required for Use of Customer Proprietary Network Information.

(F) A company shall annually submit statements in its annual report to the commission explaining how its operating procedures ensure that it is or is not in compliance with the rules in this section. Such statements will be in a format as described in the commission's annual report form. Alternatively a company may attach to its annual report a copy of its CPNI filing to the Federal Communications Commission if the company does not share CPNI with joint venture partners or independent contractors except to initiate, render, bill, and collect for telecommunications services (or as otherwise permitted without customer approval under the commission's rules under 4 CSR 240-33.160(2)(C)). If a company does share such CPNI with joint venture partners or independent contractors then the company must indicate whether confidentiality agreements are used that comply with 4 CSR 240-33.160(3)(A). In addition, the company shall include an explanation of any actions taken against any individual or entity that unlawfully obtains, uses, discloses, or sells CPNI and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 60—Division of Career Education
Chapter 100—Adult Education**

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under sections 161.092 and 167.031, RSMo Supp. 2009, and sections 161.093 and 161.095, RSMo 2000, the board amends a rule as follows:

5 CSR 60-100.020 Administration of High School Equivalence Program is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2010 (35 MoReg 214). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 70—Special Education
Chapter 742—Special Education**

ORDER OF RULEMAKING