Robin Carnahan

Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

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SECRETARY OF STATE
ADMINISTRATIVE RULES

A "SEPARATE" rule transmittal sheet **MUST** be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-29.010

Diskette File Name Final Rule 29.010

Name of person to call with questions about this rule:

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Statutory Authority Sections 386.040 and 386.250 Current RSMo date 2000

Date filed with the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037 RSMo 2000 and Executive Order No. 97-97 (June 27, 1997)

B. CHECKLIST guide for rule packets:

- ☒ This transmittal completed
- ☒ Cover letter
- ☐ Affidavit
- ☐ Small business impact statement
- ☐ Fiscal notes
- ☐ Forms, number of pages _____
- ☐ Authority section with history of the rule
- ☐ Public cost statement
- ☐ Private cost statement
- ☐ Hearing date _____

C. RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking (choose one) ☐rule, ☐amendment, ☐rescission, or ☐ termination

MUST include effective date _____

☐ Proposed Rulemaking (choose one) ☐rule, ☐amendment, or ☐rescission

☒ Order of Rulemaking (choose one) ☒rule, ☐amendment, ☐rescission, or ☐ termination

MUST complete page 2 of this transmittal

☐ Withdrawal (choose one) ☐rule, ☐amendment, ☐rescission or ☐emergency)

☐ Rule action notice ☐ In addition ☐ Rule under consideration

D. SPECIFIC INSTRUCTIONS: Any additional information you may wish to provide to our staff

Small Business Regulatory Fairness Board (DED) Stamp	JCAR Stamp

RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-29.010

1a. Effective Date for the Order

☒ Statutory 30 days

Specific date_____

1b. Does the Order of Rulemaking contain changes to the rule text?

☒ YES ☐ NO

1c. If the answer is YES, please complete section F.

If the answer is NO, **STOP** here.

F. Please provide a complete list of the changes in the rule text for the order of rulemaking, indicating the specific section, subsection, paragraph, subparagraph, part, etc., where each change is found. It is especially important to identify the parts of the rule that are being deleted in this order of rulemaking. Give an explanation of each section, subsection, etc. which has been changed since the proposed rulemaking was published in the Register.

The phrase "and interstate/interMTA wireless traffic" has been deleted from the second sentence.

The entire last sentence has been added.

NOTE: ALL changes MUST be specified here in order for those changes to be made in the rule as published in the *Missouri Register* and the *Code of State Regulations*.

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 29 – Enhanced Record Exchange Rules

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-29.010 The LEC-to-LEC Network **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005, (30 MoReg 49). Those sections of the proposed rule with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations.*

COMMENT: A public hearing on this and associated proposed rules was held February 9, 2005, and the public comment period ended February 2, 2005. At the public hearing, Keith Krueger, Deputy General Counsel in General Counsel's Office of the Public Service Commission of Missouri, and William Voight, Rate/Tariff Examination Supervisor of the Public Service Commission of Missouri, provided oral comments and responded to questions from Commissioners: Leo J. Bub, appeared as attorney for Southwestern Bell Telephone, LP, Marlon Hines and Joe Murphy provided comments for Southwestern Bell Telephone, LP, and Marlon Hines responded to Commissioners questions; John Idoux provided oral comments and responded to Commissioner questions for Sprint Missouri, Inc. and Sprint Spectrum, L.P. d/b/a Sprint PCS; Matt Kohly appeared to respond to any Commissioner questions directed to Socket Telecom LLC, XO Communications Services, Inc. or Big River Telephone Company, LLC; Larry Dority of Fischer and Dority, P.C., provided comments and responded to Commissioner questions for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; William R. England, III of Brydon, Swearengen & England P.C., appeared as attorney for and Robert Schoonmaker provided oral comments and responded to Commissioner questions for the companies known as the Small Telephone Company Group ("STCG"); and Craig S. Johnson of Andereck, Evans, Milne, Peace and Johnson, LLP, provided oral comments for the companies known as the Missouri Independent Telephone Group ("MITG").

The Staff of the Commission; Southwestern Bell Telephone, L.P.; Sprint Missouri, Inc. and Sprint Spectrum, L.P. d/b/a Sprint PCS; Socket Telecom LLC, XO Communications Services, Inc. and Big River Telephone Company, LLC, CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; STCG; MITG; VoiceStream PCS 11 Corporation, VoiceStream Kansas City, Inc., and Powertel/Memphis, Inc.-collectively, d/b/a T-Mobile, New Cingular Wireless PCS, LLC, Eastern Missouri Cellular Limited Partnership, Kansas City SMSA Limited Partnership, Missouri RSA 11/12 Limited Partnership, Missouri RSA 8 Limited Partnership, and Missouri RSA 9131 Limited

Partnership-collectively d/b/a Cingular Wireless, and Nextel West Corp. filed written comments.

COMMENT: The Missouri Independent Telephone Company Group (MITG) filed comments generally supporting the Enhanced Record Exchange Rules. The MITG states that the rules establish a billing record and financial responsibility system for intrastate intraLATA traffic, and it supports adoption of the rules. The MITG states the rules will end the practice of the past five years wherein SBC unilaterally determined and announced changes in billing record formats and compensation responsibilities to the rest of the local exchange carriers in Missouri. According to the MITG, the small carriers have experienced actual failures of the current record-creation system, as evidenced by SBC's failure to record or pay for its own "Local Plus" and Outstate Calling Area traffic, as well as other failures, including SBC's failure to record Alltel wireless traffic. The MITG points to failures in providing sufficient information to rate traffic, failure to identify a financially responsible carrier, and a general inability of terminating carriers to reconcile their recordings with the billing records provided to them. According to the MITG, such failures on the part of transiting carriers inhibit terminating carriers' ability to identify which carriers are failing to meet compensation obligations incurred by originating carriers. The MITG offers the rules as the culmination of more than eight years of small local exchange carrier efforts to assure an interexchange carrier/Feature Group D (IXC/FGD) billing relationship after implementation of intraLATA presubscription for long distance telephone service. Despite discontent that its efforts to implement an IXC/FGD billing relationship have not been successful, the MITG supports adoption of the rules.

The MITG cites eight specific items needed for successful intercompany compensation. According to the MITG, the Enhanced Record Exchange Rules comprehensively addresses all eight of those items. MITG notes that establishment of the rules will necessitate the maintenance and operation of two different types of billing systems and compensation responsibilities – one for the interLATA network and one for the intraLATA network. Nevertheless, states the MITG, adoption of the rules will implement principles and practices that are preferable to the current lack of any enforceable terminating traffic relationship that has existed since the 1999 termination of Missouri's Primary Toll Carrier Plan. The MITG cites numerous deficiencies of an "originating responsibility" and "originating billing records" system, and states that it is time for improvement. While the MITG remains concerned about what it calls the inherent deficiencies of an originating carrier compensation structure, it supports the rules as a fair attempt to regulate such a compensation structure.

The MITG's written comments express a belief that its intraLATA access tariffs should be followed in all instances. MITG states that transiting carriers are essentially interexchange carriers, and that MITG exchange access tariffs should fully apply to the exchange access traffic transited to its member companies by transiting carriers. MITG also states that its tariffs require the elimination of the LEC-to-LEC network upon implementation of Feature Group D (FGD). Thus, according to the MITG, the LEC-to-LEC network should not exist in the first instance. Moreover, states the MITG, "the ERE

rule should not have been necessary." The MITG further opines that establishment of a LEC-to-LEC network will lead to the maintenance and operation of two different billing systems and two different compensation responsibilities for terminating traffic. MITG opines that no justification exists to allow transiting carriers to act as interexchange carriers, yet escape the responsibilities of interexchange carriers. MITG complains of inadequate billing information for, among other matters, wireless traffic. However, MITG concedes that a rule prohibiting interstate/interMTA wireless transiting traffic represents an "improvement."

Lastly, the MITG also supports the ability of terminating carriers to re-examine the success the rules may have on addressing the MITG's concerns over the business relationship codified by the rules. The MITG suggests a reasonable time for re-examination would be two years.

COMMENT: Socket Telecom, XO Communications Inc, and Big River Telephone Company (Socket, XO, and Big River) generally support the Enhanced Record Exchange Rules as written. These carriers are particularly supportive of the provisions that permit terminating carriers to bill from Category 11-01-XX records created at the terminating end office. According to Socket, XO, and Big River, the current practice employed by transiting carriers such as SBC, Sprint, and CenturyTel is simply unworkable in today's telecommunications environment - especially when telephone numbers are ported between carriers. Socket, XO and Big River offer examples to demonstrate how the present system leads to the wrong carrier being improperly compensated for call termination. Socket, XO and Big River opine that use of records created at the terminating end office is a critical step in the right direction if Missouri is going to have facility-based competition.

COMMENT: The Telecommunications Department Staff's (Staff's) comments express support for the proposed Enhanced Records Exchange Rules and, except for additions addressing transiting traffic to and from Internet Service Providers, recommends adoption of the rules without change. Staff provided written comments describing the lengthy process it used to comply with the Commission's directive to promulgate rules addressing problems inherent to the LEC-to-LEC network. Staff states that while undertaking such efforts it endeavored not to interfere with existing LEC-to-LEC network billing processes that appear to work, offering by way of example the LEC-to-LEC network traffic and record exchange systems utilized between the former Primary Toll Carriers (SBC, CenturyTel, and Sprint). Staff also states that the proposed rules do not interfere with traffic-recording and billing systems utilized on the Interexchange Carrier (IXC) network, as governed by the Federal Communications Commission (FCC). Staff offers its opinion that adoption of the proposed rules will accomplish the Commission's stated objectives as announced in the Order Directing Implementation issued by the Commission in Case No. TO-99-593, and in the Commission's Order Finding Necessity for Rulemaking that was issued in the instant case. While acknowledging that companies have always had and will likely continue to have instances of billing disputes, Staff opines that the proposed rules will minimize the problem of unidentified traffic, while establishing a framework to

resolve billing disputes when they do occur. Staff offers its belief that a rule is necessary to provide guidance to the telecommunications industry.

The Staff's written comments also express concern about Voice over Internet Protocol (VoIP) telecommunications traffic transited to terminating carriers via the LEC-to-LEC network. Staff states its concerns are primarily with call termination, and not call origination. Staff opines that interconnection agreements should be required before VoIP telephone companies are permitted to transit calls over the LEC-to-LEC network. In the absence of such agreements, the Staff recommends changes to this rule which would mandate use of the interexchange carrier network for VoIP telephone call termination.

COMMENT: The Small Telephone Company Group (STCG) supports adoption of the proposed Enhanced Record Exchange Rules as a good first step towards resolving the problem of unidentified and uncompensated traffic on the LEC-to-LEC network. The STCG's written comments provide a review of the long history of transiting traffic in Missouri, beginning with the Primary Toll Carrier Plan and concluding with the present situation. The STCG states it experienced numerous problems with the existing LEC-to-LEC network arrangement, and expresses disagreement with the existing business relationship between its member companies and Missouri's three transiting carriers. The STCG extensively documents instances of unidentified and uncompensated traffic occurring on the LEC-to-LEC network in recent years, and expresses great concern that its member companies are forced to accept 100 percent of the risk for such traffic.

Along with its support of the Enhanced Record Exchange Rules, the STCG suggests several changes, which, it says, will represent improvement. Among the improvements the STCG recommends a "sunset" provision for Chapter 29. According to the STCG, the efficacy of this chapter should be examined within three years in order to ensure that the proposed Enhanced Record Exchange Rules are actually working. The STCG proposes adding 4 CSR 240-29.170 to accomplish the sunset provision. The STCG opines that addition of a sunset provision will provide for Commission review of the effectiveness in eliminating unidentified and uncompensated traffic.

The STCG suggests the proposed rule prohibits interLATA wireline and interMTA wireless traffic from using the LEC-to-LEC network. The STCG states it supports such limitation. According to the STCG, this limit would prevent additional types of traffic from being transited that may be unidentified and unbillable. The STCG expresses concern that the definition of the LEC-to-LEC network may permit SBC to circumvent the rule by sending interLATA calls to STCG member companies for call termination. Other than to suggest clarification be made, the STCG's comments offer no suggestion as to what such clarification might be.

COMMENT: CenturyTel opposes the Enhanced Record Exchange Rules. CenturyTel states that the rules are unnecessary, and that they will create inefficiencies and increase costs. CenturyTel characterizes issues related to the LEC-to-LEC network as compensation issues, and suggests the issues have mostly been resolved. CenturyTel notes that Peace Valley Telephone Company and Alltel are the only two small local

exchange carriers subtending its tandem switches, and neither company has expressed concerns regarding CenturyTel's record exchanges occurring thereon.

COMMENT: SBC recommends the Commission refrain from adopting the Enhanced Record Exchange Rules at this time. According to SBC, no showing has been made of any need to adopt such rules. SBC states that no formal complaints have been lodged involving unidentified traffic, and that the complaints that have been filed focused on the rate charged for transited wireless traffic. SBC opines that these issues have mostly been resolved through wireless termination tariffs and traffic termination agreements involving wireless carriers and small telephone companies. SBC points to the billing records it is now creating, and states that such records now capture traffic that previously went unreported. SBC offers that the Enhanced Record Exchange Rules impose unnecessary costs and unwarranted regulatory burdens on the Missouri telecommunications industry. While SBC does not believe a rule is warranted at this time, SBC does note its agreement with those aspects of the rules that establish the principle that the originating carrier is the carrier responsible for compensating all downstream carriers for transiting traffic. According to SBC, this concept is consistent with federal standards.

SBC's written comments oppose this rule to the extent that it seeks to impose restrictions on a carrier's lawful use of its own network. SBC opines the Commission has no authority to impermissibly interfere with federal law and the Commission's own rulings which, for example, expressly permit SBC to provide interLATA telecommunications services. According to SBC, the rule co-opts management rights of transiting carriers for traffic occurring over their own networks, and unlawfully impairs the financial value of SBC's LEC-to-LEC network. SBC states that the rule results in an unlawful taking in violation of state and federal constitutions.

COMMENT: Sprint filed written comments stating its long-standing and adamant opposition to enactment of the Enhanced Records Exchange Rules. Sprint submits that the proposed rules would create new and additional problems for both the industry and the Commission that would outweigh any potential benefits. Sprint states that only five small carriers subtend its tandem offices, and cites figures to compare the customers served by small carriers to those served by large carriers. Sprint adds that none of the carriers to whom Sprint transits traffic have filed any formal Commission complaints against Sprint regarding transiting traffic. Sprint opines that unidentified traffic in Missouri is not a material issue, and suggests that no carrier has presented any quantification of benefits to be received from the proposed rules. Sprint challenges carriers supportive of the rule to quantify the amount of unidentified traffic received. Sprint opines that only under such circumstances will it be appropriate to perform an analysis to determine if the unidentified traffic is even compensable. Sprint offers that the complaints received by the Commission have been about compensation or the type of traffic being exchanged – not about large quantities of unidentifiable traffic. Sprint urges the Commission to not go forward with its efforts to implement the rules.

Sprint's written comments state that this rule is overly broad. Sprint states that not all long distance carriers have direct access to each Sprint end office. Sprint offers its Platte

City exchange as an example of tandem switching that does not necessitate direct trunk transport to and from interexchange carriers. Sprint states that the rule prohibits tandem switching of interexchange telecommunications traffic. Sprint opines that this rule is inconsistent with 4 CSR 240-29.050(1), which does acknowledge common LEC-to-LEC network trunking arrangements used to connect terminating tandem offices to subtending end offices. Sprint suggests the last sentence of this rule be entirely stricken. Sprint also voices concern with placing limitations on use of the LEC-to-LEC network by wireless carriers who may wish to transit interstate/interMTA wireless-originated traffic. Sprint states the Commission does not have jurisdiction over such wireless carrier activity. Sprint cites to 47 USC 332(c)(3)(A) as prohibiting state and local governments from the regulation of wireless carrier market entry. Sprint states that 47 USC 251(c)(2) permits carriers to interconnect. Sprint opines that this section permits it to transit interstate/interMTA traffic.

COMMENT: T-Mobile, Nextel, and Cingular (collectively, Joint Wireless Carriers) state that the Enhanced Record Exchange Rules do not encourage deployment of new technologies, promote competition, inspire innovation, or reduce regulation - all in contravention of Congressional intent. To the contrary, Joint Wireless Carriers submit that the rules will inevitably increase consumer cost. Citing, in particular, 47 U.S.C. Section 152(b), Section 251(a), Section 332(c)(3), and Section 253(a), as well as Sections 386.020(53)(c), 386.030 and 386.250(2) RSMo, Joint Wireless Carriers question the Commission's authority to impose rules governing wireless carriers' use of the LEC-to-LEC network. At minimum, state Joint Wireless Carriers, the Commission should make clear that the Enhanced Record Exchange Rules do not apply to wireless carriers or to telecommunications traffic sent or received by wireless customers.

Joint Wireless Carriers' written comments cite federal and state law exempting Commercial Mobile Radio Service providers from the Commission's jurisdiction. Joint Wireless Carriers state that federal preemptions apply to intrastate as well as interstate traffic. Joint Wireless Carriers object to the aspect of this rule requiring that interstate/interMTA wireless traffic be directed to the interexchange carrier network. Joint Wireless Carriers allege the Commission has already determined that it is impossible to comply with the routing rules it proposes. By allegedly imposing a "triple screening function" during call set-up, Joint Wireless Carriers allege the rule would impermissibly require a fundamental change in how its customers' calls are routed. Joint Wireless Carriers state that number portability may occur to wireless carriers or VoIP telephone companies, thus in some cases making the location of the end user indeterminable, even if "triple screening" were implemented.

Joint Wireless Carriers state a presumption that the Commission is proposing this rule to facilitate the ability of rural local exchange carriers to identify wireless traffic that should be assessed interstate access charges. Joint Wireless Carriers characterize the LEC-to-LEC network as one that uses Feature Group C (FGC) protocol, and state that it commingles wireless traffic over the FGC trunk group. Joint Wireless Carriers characterize FGC protocol as "antiquated" and accuse rural local exchange carriers of not modernizing their networks in spite of having received over $216 million in subsidies.

Joint Wireless Carriers state the problem with rural local exchange carriers is determining whether wireless calls are to be compensated at reciprocal compensation, or at the rates specified in exchange access tariffs. Joint Wireless Carriers state that even with the addition of an Operating Company Number (OCN), rural local exchange carriers are still unable to determine what rate to apply to any given wireless call. Joint Wireless Carriers characterize wireless termination tariffs as "futile" and state that the only way to charge wireless carriers for call termination is by negotiating appropriate compensation factors. Joint Wireless Carriers state that rural local exchange carriers complain of an inability to identify incoming wireless traffic and cannot determine proper rate application. Joint Wireless Carriers state this problem is largely self-inflicted because rural local exchange carriers have chosen to maintain obsolete FGC networks, despite federal subsidies. Joint Wireless Carriers accuse rural local exchange carriers of deliberately not initiating negotiations with wireless carriers. Joint Wireless Carriers state that Missouri rural local exchange carriers advocate changes in the Unified Intercompensation Regime Case that render the rule requirements obsolete.

Joint Wireless Carriers opine that states cannot regulate market entry or rates charged by wireless carriers. Joint Wireless Carriers calculate the rule would apply to only one percent of its traffic. Joint Wireless carriers object to the fiscal note reporting less than $500 in the aggregate for this rule, and characterize such assumptions as defying common sense and commercial realities.

RESPONSE AND EXPLANATION OF CHANGE: The Commission will begin its initial response by first acknowledging the general manner in which numerous commentators submitted written comments. While some commentators associated specific comments with specific rules, other commentators, often at length, responded without acknowledging which rule they were referring to. Moreover, numerous commentators, rather than associating specific comments to specific rules, chose to lump comments into general categories, or list "issues" or other categories of their own choosing. We also recognize that several of the proposed rules are intertwined such that a comment on one rule may apply to other rules as well. Therefore, wherever possible we have used our judgment and attempted to arrange the commentators' responses to those rules most closely aligned with their comments. Because numerous commentators filed general comments addressing the entire gamut of the Enhanced Record Exchange rulemaking, we address here, in this rule establishing the LEC-to-LEC network, several items of key importance that have been brought to our attention.

We first acknowledge the general comments filed by various parties addressing the reported problems associated with traffic traversing the LEC-to-LEC network. We recognize the comments and viewpoints of Missouri's three incumbent transiting carriers - SBC, Sprint, and CenturyTel. SBC, in particular, points to the improvements that have been made to its records creation process while CenturyTel and Sprint generally dismiss past critiques of record exchange and ascribe most issues to a collections problem. At most, according to the transiting carriers, whatever problems that may have previously existed have largely been corrected. Some companies question the extent to which any problems ever existed on the LEC-to-LEC network.

The transiting carriers' comments are contrasted with the extensive documentation of problems experienced by the member companies of the MITG and STCG. The MITG and STCG comment extensively on the traffic-recording and billing problems associated with the LEC-to-LEC network and state that these problems have occurred since elimination of the Primary Toll Carrier Plan. These commentators point to the various docketed cases giving rise to the proposed rules. The MITG correctly points out that many of the issues challenging carriers today are the same issues that were discussed in prior cases. By way of example, the MITG offers Case Numbers TO-84-222; TO-99-254; and TO-99-593. In providing its analysis, these small companies point to past instances of unrecorded traffic generally ranging around 24 percent in July of 2000, to about 10 percent after adjusting for SBC's "Local Plus" traffic. According to testimony at the public hearing on these rules, recent reviews have been conducted for eight companies in an attempt to quantify the extent of any traffic-recording problem that still exists. According to that testimony, unidentified traffic varied from as low as less than one percent to as high as approximately six percent of all traffic. Thus, the threshold question we must address is whether sufficient reason continues to exist that would warrant rules to address traffic utilizing the LEC-to-LEC network.

We conclude that minimally invasive local interconnection rules are necessary to address the complex processes and myriad interests of those companies involved with traffic traversing the LEC-to-LEC network. We characterize our rules as minimally invasive because in all instances they simply codify existing practices currently employed by those who are most apprehensive and most opposed to the proposed rules. For example, our modified rules do not seek to regulate the business practices and customer-related activities of nonregulated entities, such as wireless carriers. Our rules are minimally invasive because the record-creation obligations we codify, such as the requirement for tandem providers to create Category 11-01-XX billing records, is simply an acknowledgement of what tandem providers are already doing. Our rules are minimally invasive because, in spite of considerable exhortations to the contrary, we do not seek to change the business relationship that the Commission ordered when it eliminated the Primary Toll Carrier Plan. Our rules impose no new record-creation obligations on any carrier; rather, new requirements permitting terminating record-creation is strictly voluntary. Our rules are minimally invasive because trunk segregation occurring under our rules is common industry practice, as evidenced by the voluminous record we have examined and commented upon herein. Our rules do not overextend technical requirements because those requirements contained in the rule, such as the requirement for passage of CPN, do not exceed the technical capabilities commonly employed by all carriers currently using the LEC-to-LEC network. Indeed, and as will be demonstrated, our CPN requirements are entirely consistent with the requirements offered by SBC's replacement Missouri Section 271 Interconnection Agreement (M2A).

We find that a set of local interconnection rules is particularly necessary for transiting traffic because parties receiving this traffic are not involved in the negotiations leading to the traffic delivery. Moreover, and as will be further explained, all terminating carriers must be given more leeway in managing their own networks when receiving traffic from

originating carriers. This is particularly true in instances for which the terminating carrier has no traffic termination or interconnection agreement in place. Equally important to rule creation is an environment, as in Missouri's, where the business relationship does not hold the transiting carrier principally or even secondarily liable for traffic delivered to unsuspecting terminating carriers.

We find it particularly necessary to implement local interconnection rules in light of SBC's stated policy that transiting traffic is not subject to Section 251/252 obligations of incumbent carriers. Because we are unaware of the legal positions of CenturyTel and Sprint in this matter, we will confine our comments to SBC by taking official notice of previous testimony of its witnesses and by noting that SBC provides the preponderance of transiting service within our jurisdiction. We note the Direct Testimony of SBC witness Timothy Oyer in Case No. T0-2005-0166. According to Mr. Oyer, SBC is no longer required to submit transiting provisions of its interconnection agreements to the Commission because such traffic does not create a Section 251/252 obligation. Moreover, according to Mr. Oyer, a "plain reading" of Section 251(a) makes clear that SBC has no obligation to provide transiting service, and no obligation to subject such service to arbitration under Section 252. According to Mr. Oyer, SBC should be permitted to provide its transiting service pursuant to tariff or individually negotiated agreements not submitted to the Commission for approval.

Unlike new entrants, incumbent local exchange carriers cannot avail themselves of federal laws to negotiate interconnection agreements and other matters with other incumbent local exchange carriers. In addressing these matters, the Commission will take official notice of its extensive case files as well as the task force reports, committee meetings, written comments and testimony in this case. We find the record before us is one of near constant disagreement among two factions of Missouri incumbent local exchange carriers. One faction is comprised of the three largest Missouri incumbent local exchange carriers, who happen to also be the transiting carriers receiving payment for providing the transiting service. The other faction can best be described as the rest of Missouri's incumbent local exchange carriers, who happen to be small carriers who are not transiting carriers, and who also happen to report great difficulty in receiving compensation for terminating the traffic that is transited to them. We find the matters separating the two factions to be largely unaddressed in federal law. Nor do we find any rules of the FCC which address the disputes that LEC-to-LEC network traffic fosters between these incumbent local exchange carriers. It is for these reasons that we find a modified version of the Enhanced Record Exchange Rules to be of particular importance and necessity. We anticipate that our rules will provide the necessary guidance to reduce instances of traffic-recording and billing problems, and provide a forum for resolution of those problems when they do occur.

While we acknowledge that traffic-recordings have improved since we began this process (a fact acknowledged by the small companies' witness), we disagree with the contention of Sprint, CenturyTel and others who comment that the issues with transiting traffic are primarily limited to that of bill collection. Transiting carriers and non-transiting carriers alike have credited Commission-approved wireless termination tariffs as assuaging

concerns with traffic problems occurring on the LEC-to-LEC network. However, we find the future of such tariffs to be seriously in doubt. As was also explained at the public hearing, expected traffic by new facility-based entrants such as the cable telephone companies will place further demands on the traffic-recording capabilities of the LEC-to-LEC network. We find, contrary to assertions of Sprint and CenturyTel, that a major aspect of the difficulties experienced by terminating carriers involves identifying responsible carriers in an environment where no direct business relationship exists. We find that the difficulties experienced by terminating carriers extend far beyond the costly and frustrating experiences of non-payment of invoices. Given the extensive record before us, we will adopt a modified version of the Enhanced Record Exchange Rules as a set of local interconnection rules to address the problems associated with traffic-recording, identification, and collections associated with use of the LEC-to-LEC network. We find that adoption of rules is necessary because the activities of transiting carriers directly affect the financial and operational well-being of terminating carriers who are not presented an opportunity to participate in the negotiation of transiting agreements. Adoption of rules is particularly necessary and timely because the dominant transiting provider, SBC, has ceased offering the Commission any opportunity to review the very agreements which obviously affect the interests of third parties who are not a part of the agreements.

We will also use this response section to discuss the Commission's authority over the matters pertaining to use of the LEC-to-LEC network. As will be explained further in more detail, we are eliminating those aspects of the proposed rules that restrict interstate interMTA wireless traffic from transiting the LEC-to-LEC network. We are also eliminating those proposed rules requiring wireless termination tariffs. We trust elimination of these items will reduce, if not eliminate, the concerns of wireless carriers. But we cannot accept in total the arguments of those who would have the Commission entirely disregard transiting problems on the regulated LEC-to-LEC network simply because nonregulated carriers use the network. The Commission is mindful that the LEC-to-LEC network is obviously a continuum of a much larger multi-jurisdictional network, and we will enact our rules in harmony with the rules of other jurisdictions.

We note the comments of Joint Wireless Carriers who cite 386.020(53) (c), 386.030, and 386.250(2) RSMo as precluding our authority over the LEC-to-LEC network when such network is used by wireless carriers not subject to our jurisdiction. Sprint, likewise, questions the Commission's authority in this area. Section 386.020(53)(c) excludes wireless service from the definition of telecommunications service. Section 386.030 precludes the Commission's authority over interstate commerce unless specifically authorized by the Congress, and Section 386.250(2) limits the Commission's jurisdiction to telecommunications between one point and another point within Missouri. We also note Joint Wireless Carriers' reference to 47 U.S.C. Section 152(b), Section 251(a), 251(b)(5), Section 332(c)(3) and Section 253(a).

As we have stated, we trust that elimination of certain portions of the draft rules will alleviate the wireless carriers' concerns. However, to the extent the commentators continue to question the Commission's authority to establish interconnection

requirements of incumbent local service providers, we will first rely upon the Commission's general authority over all telecommunications companies found throughout Chapters 386 and 392 and, in particular, Section 386.320.1 RSMo 2000. This section sets forth the Commission's general supervision of all telephone companies including the manner in which their lines and property are managed, conducted and operated. As stated by counsel for Staff, the Enhanced Record Exchange Rules do not regulate wireless carriers, as the Joint Wireless Carriers and Sprint suppose. Rather, what the rules would regulate is use of the LEC-to-LEC network - not the wireless carriers. We find that Section 386.320.1, in particular, places an obligation upon the Commission to assure that all calls, including calls generated by nonregulated entities, are adequately recorded, billed, and paid for. We reject Joint Wireless Carriers' apparent contention that nonregulated carriers may use the Missouri LEC-to-LEC network without regard to service quality, billing standards, and, in some instances, with an apparent disregard for adequate compensation. We find this particularly so in the case of transiting traffic because terminating carriers often have little or no knowledge of those carriers placing traffic on the network. Given that terminating carriers are left to bear 100 percent of the liability in such situations, we find that minimally invasive rules are necessary to reduce such instances as far as practical.

Joint Wireless Carriers also rely on 47 U.S.C. Section 251 as prohibiting the Commission's authority over the transiting traffic generated by wireless carriers. Joint Wireless Carriers specifically cite Sections (a) and (b)(5). We acknowledge the prerogative of wireless carriers to connect to the LEC-to-LEC network with reciprocal compensation agreements based upon the most efficient technological and economic choices. And we acknowledge that wireless carriers may sign, and submit to the Commission for approval, agreements to interconnect directly or indirectly with landline carriers. Indeed, we encourage all carriers to sign agreements and submit them to the Commission for approval pursuant to federal and state law. However, the record before us is one of far less than complete agreements, signed or otherwise. We are not convinced that one carrier's most technological and efficient interconnection should extend to another carrier's financial loss without an agreement. Moreover, we would note another aspect of Section 251 not cited by Joint Wireless Carriers. Section (d) (3) preserves a state's interconnection regulations. Specifically, this section holds that the FCC may not preclude the enforcement of any regulation, order, or policy of a State commission that establishes access and interconnection obligations of local exchange carriers. We find that the obligation we are imposing on incumbent local exchange carriers is a necessary interconnection obligation on incumbent carriers. Moreover, we can see nothing in our rules that prevents interconnection in the most efficient technological and economic manner, nor do we find anything in our modified rules that is otherwise inconsistent with federal law.

We also note Joint Wireless Carriers' reliance on 47 U.S.C Section 152(b) as giving the FCC authority over intrastate wireless service and Sections 332(c)(3) and 253(a) as preempting state regulation of wireless entry. We note Joint Wireless Carriers' comment that all wireless traffic is interstate, because it is impossible or impractical to determine the end points of wireless calls. Moreover, Joint Wireless Carriers hold that "entry"

prohibitions extend to "any" regulation – regardless of whether it prohibits market entry. As we have previously stated, we anticipate that removal of certain proposed rules will lessen concern on the part of wireless carriers. But while we acknowledge federal preemption in the area of wireless services, we do not believe our rules conflict with federal law, because they have nothing to do with the relationship between a wireless carrier and its customers. Rather, our proposed rules have only to do with the terms and conditions that may be required by those who provide services *to a wireless carrier*, and in particular, transiting service. Our rules are not targeted to the practices of wireless carriers; rather, our rules are targeted to the practices of regulated local exchange carriers and the network employed by them – a matter that *is* under the jurisdiction of this Commission. In particular, our proposed rules address use of the LEC-to-LEC network, especially that traffic which is transited to terminating carriers who are not a party to agreements made between originating carriers (including but not limited to wireless carriers) and transiting carriers.

The Commission agrees with the comment of Joint Wireless Carriers that the addition of an Operating Company Number (OCN) will not determine the jurisdictional rate of wireless telephone calls. We also agree that Calling Party Number (CPN) cannot in all instances be used to determine the proper jurisdiction of wireless calls. We caution all terminating carriers that any attempt to use an OCN or CPN to determine the proper jurisdiction of wireless telephone calls on the LEC-to-LEC network is not permissible under our local interconnection rules. We recognize this limitation contrasts with processes historically employed on the Interexchange Carrier network in which CPN is used to determine the jurisdiction of wireless calls. Again, we caution that our rules will not permit such practices on the LEC-to-LEC network.

However, this does not mean that billing records should not contain an OCN, because an OCN will, along with other determinates, aid identification of the responsible party, irrespective of the jurisdictional rate to be applied to each wireless telephone call. Similarly, this does not mean that CPN should not be present on each and every telephone call, wireless or otherwise, traversing the LEC-to-LEC network. We disagree with the presumption of Joint Wireless Carriers that the purpose of our rules is to facilitate the ability of rural carriers to identify wireless calls that are to be assessed switched access charges. We also disagree with Joint Wireless Carriers that the FGC network, however defined, is perpetuated by rural carriers when in fact, the evidence before us indicates that it is the small carriers who, for years, have advocated elimination of what Joint Wireless Carriers characterize as the "FGC network". Given the demands placed on the LEC-to-LEC network by wireless carriers, we find instructive the testimony at the public hearing that characterized as "particularly ironic" the Joint Wireless Carriers' notion that the LEC-to-LEC network is "antiquated" and should be done away with.

We will clarify that the purpose of providing CPN on all traffic traversing the LEC-to-LEC network is twofold. First, as described by the STCG, CPN brings full benefit to end users subscribing to Caller Identification service. Secondly, we find that CPN will aid terminating carriers in establishing general auditing provisions for LEC-to-LEC network

traffic. For example, CPN can be used to determine the party responsible for placing traffic on the LEC-to-LEC network. Stated differently, the presence of CPN will enable terminating carriers to gather specific information about calls sent for termination even though, due to roaming, the presence of CPN will not always permit determination of the proper jurisdiction of each and every telephone call.

We note the paucity of evidence before us that wireless carriers are unable to transmit caller identification on wireless-originated telephone calls. To the contrary, only Sprint has provided but a single landline example of one exchange incapable of providing CPN on calls traversing the LEC-to-LEC network. The comments filed in this case indicate a simple unwillingness to have local interconnection rules requiring passage of CPN, not an inability to comply with them. We note the extent to which CPN and OCN subject matters were covered in the Task Force meetings and conclude that the evidence before us does not compel acquiescence to the notion that originating carriers are incapable of transmitting CPN, nor are transiting carriers incapable of transmitting it. We note that wireless carriers, in particular, have been required by the FCC to have the capability of transmitting Caller ID as part of Phase One Wireless 9-1-1 procedures. We conclude our rules require nothing more of wireless carriers than has already been required of them by the FCC.

We acknowledge comments of the MITG that codification of the billing relationship inherent in the LEC-to-LEC network will lead to two different billing systems and two different compensation systems. We do not disagree that transiting carriers function as interexchange carriers in many respects, albeit without the obligations of interexchange carriers. We also recognize the likelihood that dual systems have increased costs for small carriers, perhaps substantially. However, decisions to change the traditional LEC-to-LEC network business relationship have been made in past cases and we are hesitant to reverse course without at least giving the new rules a chance to work. We are encouraged that implementation of our local interconnection rules will reduce whatever financial burden may have been caused by past actions of transiting carriers and past instances of unidentified traffic.

We decline to adopt the Staff's request to expand the proposed rules to address transiting traffic traversing to and from the Internet. We find Staff's suggestions to be premature when viewed in light of unsettled developments concerning the Internet. For this reason, we decline to also incorporate the Staff's additional definitions which, according to Staff, were required to support its recommendation for Internet traffic.

We acknowledge the STCG's comments concerning SBC's potential use of the LEC-to-LEC network to terminate interLATA landline traffic without the use of an interexchange carrier's Point of Presence. While we note the STCG's expressed desire for clarification to prohibit such action, we also note that the STCG did not offer suggestions for improvement in this area. Moreover, we find that the STCG's suggestion for 4 CSR 240-29.030(4) does not address its stated concern in this matter. We determine that the STCG's concerns correlate to those of SBC which we address next.

We recognize that SBC is permitted to provide interLATA long distance telephone service pursuant to Section 271 of the Federal Telecommunications Act, and that in many cases it may do so without a separate affiliate. Indeed, we would encourage SBC to avail itself of all rights granted to it under federal law. However, we do not accept that our interconnection rules prohibit SBC's lawful use of its own network nor do we accept that our rules co-opt management rights to employ service offerings to its own customers over SBC's own facilities. While we readily acknowledge SBC's stated concerns in this matter, we find SBC's comments on 4 CSR 240-29.010 to be lacking in specificity as to how the rule brings forth the presumed results. Indeed, SBC does not even set forth with specificity whether it is the interLATA transiting restriction that is the primary area of concern. We will presume that it is, and address our responsive comments accordingly.

We find nothing in our rules that restricts how SBC or any other carrier may provide services over its *own* facilities to its *own* customers. Rather, we find that our rules are intended and in fact do govern instances when one carrier uses *another carrier's* facilities in conjunction with its own facilities to provide service. In particular, our rules address situations where no contract exists between a tandem company and a non-affiliated terminating company. As will be further clarified, we find that our rules do not preclude SBC from providing interLATA service to its customers in, for example, Sacramento, California, and terminating calls to its customers in Kansas City without the use of an interexchange carrier Point of Presence. In such an example, no facilities other than SBC's own facilities are used to process the call. The LEC-to-LEC network is not used because calls do not leave SBC's own network nor are calls transited or otherwise sent to unsuspecting terminating carriers. Our rules do not cover such instances – indeed, no interconnection even takes place – and consequently SBC's unlawful takings argument is unsupportable. For the same reason, we do not believe that our rules "impair the financial value" of SBC's network. It is only when SBC (or another transiting carrier) chooses to send calls to another local exchange carrier that our interconnection rules intercede. In such instances, SBC is no longer merely "using its own network." Rather, SBC (and other transiting carriers) are most certainly using the networks of other terminating carriers, often without the knowledge of those carriers. Moreover, the record before us clearly demonstrates numerous instances occurring over several years whereby terminating carriers suffer financially from traffic (much of it transited) terminating on their networks without proper compensation. This is in contrast to many of SBC's Commission-approved interconnection agreements which clearly establish that SBC is financially compensated for transiting traffic on behalf of originating carriers. Under those situations, it would seem more likely that any "takings" are directed more to unsuspecting terminating carriers, rather than SBC. We find that under such circumstances, our rules quite properly set forth the arrangement in which such interconnection takes place and we cannot accept SBC's unlawful takings argument.

We are convinced that SBC's inversion of the takings argument is a result of its misinterpretation of the description of the LEC-to-LEC network as covered in the Task Force meetings, as explained in the August 18, 2003 revised draft rule that was distributed to all Task Force parties of record, and as established by rule in this section. SBC's interpretation of the definition of the LEC-to-LEC network suffers the same fatal

flaw as those of numerous other commentators. Simply stated, SBC and others misinterpret the impacts of our rule because of the common practice of confusing FGC call protocol, which is a particular signaling protocol used only in the originating direction of a telephone call, with a LEC-to-LEC telephone network, which consists of facilities and trunking arrangements used to transport calls between local exchange carriers in both the originating and terminating directions.

We will rely on the testimony referenced in footnote 19 of SBC's comments to illustrate our concerns about many commentators who mischaracterize the LEC-to-LEC network. Footnote 19 references the Direct Testimony of SBC witness Scharfenberg filed on November 30, 2000, in Case No. TO-99-593. We adopt Mr. Scharfenberg's Exhibit 3 and find that it depicts the LEC-to-LEC network as beginning with the inclusion of the originating tandem office and concluding with the inclusion of the terminating tandem office. We find this exhibit (and the accompanying narrative) specifically excludes the "common trunks" connecting the terminating office as a part of the LEC-to-LEC network. Mr. Scharfenberg's diagram simply characterizes the end office connections as "common trunks," in obvious recognition of the fact that they are not exclusive to either the LEC-to-LEC network or the IXC network. We note Mr. Scharfenberg's narrative of Feature Group C (FGC) and Feature Group D (FGD) call protocol, and we direct commentators specifically to this part of his testimony. Mr. Scharfenberg correctly describes FGC and FGD call protocol as occurring on the common trunks and pertaining exclusively to call origination and not call termination. This testimony correctly states that calls in the terminating direction do not use FGC or FGD protocol; rather, such calls are terminated with the use of a simple 10-digit routing scheme without the use of any call protocol. Commentators are cautioned to refrain from characterizing the common trunks, the LEC-to-LEC network, and the IXC network as a "FGC network" or a "FGD network" because FGC and FGD have nothing to do with a network. Rather, FGC and FGD refer to the particular manner in which calls are originated *on a network*. We ask commentators to properly use the terms FGC and FGD and to do so only when referring to a specific type of call origination. Because of the uniqueness of the common trunking arrangement, and because FGC and FGD refer to a specific call protocol used only in the originating direction, we have refrained from characterizing our rule as applying to a "FGC network" and instead have chosen to refer to the LEC-to-LEC network according to the expert testimony of Mr. Scharfenberg. Commentators, such as the STCG, who characterize call termination as a FGC or FGD function are simply incorrect. Moreover, commentators, such as Sprint and CenturyTel, who mistakenly conclude that our rules preclude tandem switched transport because "FGD traffic" cannot be "terminated" on common trunks are equally mistaken for the same reason.

Thus, we conclude that our rule is clear and that it does not hamper SBC's ability to utilize its own network for its own purposes. InterLATA calls may be terminated by SBC (or any carrier) on its own network without the use of an interexchange carrier's Point of Presence. However, absent a Commission-approved interconnection agreement or variance from these requirements, SBC is precluded by our rules from using its tandem switching operations to terminate interLATA calls to another carrier without the use of an interexchange carrier's Point of Presence. Utilization of tandem functions in such manner

constitutes use of other non-affiliated carriers' property via the LEC-to-LEC network. Without approval of the affected terminating carrier, such action is prohibited. We conclude that preclusion of such action does not co-opt management rights of SBC, does not impermissibly interfere with federal law, does not impermissibly impair the financial value of SBC's network, and does not result in unlawful takings. We conclude that as a general matter, SBC may use its own network for its own purposes, but SBC's own network ends where another carrier's network begins – that is, at a meet-point or meet-point like interconnection facility. Similarly, SBC management rights to use its network for its own purposes must end where a terminating carrier's rights begin. We will not permit SBC to unilaterally use another carrier's property without formal agreement, while simultaneously shielding itself under the guise of management prerogative.

We also reject the apparent notion of some commentators that the jurisdiction of the FCC is exclusive in matters pertaining to calls that begin in one state and end in another. We cite *Southwestern Bell Telephone Co. v. United States et al.*, 45 F.Supp. 403 (W.D. Mo 1942). There, the FCC attempted to exert jurisdiction of interzone calls traversing between Missouri and Kansas. The court ruled that the Federal Communications Commission was without jurisdiction to regulate such interstate activity. Hence, we find that our local interconnection rules that include intraLATA and intraMTA calls do not infringe on interstate matters, even though LATA and MTA boundaries extend slightly into other states.

We will also use our LEC-to-LEC comments section to address and respond to comments requesting expansion of the rules to include a "sunset" provision. The Commission fully expects and acknowledges the likelihood that traffic-recording and billing circumstances will change over time. However, we are reluctant to establish an automatic sunset provision to the Enhanced Record Exchange Rules as advocated by the STCG. Certainly any carrier or group of carriers is free at any time to petition the Commission to change, add to, or eliminate any of our rules. Thus, we decline to establish a new rule 4 CSR 240-29.170, as suggested by the STCG.

Lastly, we will use the LEC-to-LEC comments section to respond to recent inquiries focusing on the FCC's February 24th Declaratory Ruling and Report and Order in CC Docket No. 01-92 (Order). We find the FCC's Order instructive on a going-forward basis and, as a result, we will eliminate the aspect of our proposed rule that would require incumbent local exchange carriers to file wireless termination tariffs. We also find the Order provides further evidence of the continued dispute surrounding transiting traffic in general, and wireless transiting traffic in particular. We draw upon the FCC's Order as further reason to adopt minimally invasive rules pertaining to interconnection obligations of incumbent local exchange carriers – especially as it pertains to transiting traffic. We note that paragraph 6 of the FCC's Order provides an overview of the practice by which wireless carriers exchange traffic in the absence of interconnection agreements or other compensation arrangements, and accurately describes the compensation problems it causes. We also note that the Order changes Section 20.11 of the existing FCC rules, which heretofore did not attempt to prohibit wireless termination tariffs, and which, consistent with Congressional intent, contemplates that competitive carriers will seek

negotiation from incumbents, not the reverse. We concur in paragraph 11 of the Order, which correctly describes the 1996 Act's introduction of a mechanism by which CMRS providers may compel local exchange carriers to enter into bilateral interconnection agreements. We also note footnote 62 of the Order, which reviews the assertions of some commentators who characterize wireless providers generally as net payers of reciprocal compensation with a financial interest to maintain a "bill-and-keep" arrangement. We agree Section 252(b)(1) contemplates that incumbent carriers are to *receive* a request for negotiation - not submit requests for negotiation.

We note that in our proceeding, again, wireless carriers have complained that small landline carriers "have deliberately chosen not to initiate negotiations." Yet the small carriers contend that only after implementation of wireless termination tariffs have wireless carriers begun to approach small carriers with a willingness to negotiate. Yet in spite of the prevalence of wireless termination agreements approved by this Commission, we note the record before us again demonstrates instances whereby some wireless carriers continue to transit calls without interconnection agreements, and without payment for services rendered. Given these circumstances, we will await the outcome of the FCC's rulings which appear to contemplate that terminating landline carriers will engage in negotiations with carriers with whom they have no network connection, nor business relationships. In any regard, by eliminating our draft requirement for local exchange carriers to submit wireless termination tariffs, we are confident that our rules do not come into conflict with the FCC's Order.

The Commission determines that the origin of wireless-originated calls transiting the LEC-to-LEC network is best addressed in interconnection agreements, and thus will remove the requirement that interstate/interMTA wireless-originated traffic be directed to the IXC network. The Commission also determines that interLATA wireline telecommunications traffic may be terminated over the LEC-to-LEC network, provided the terminating carrier has agreed to accept such traffic in a Commission-approved interconnection agreement. We will revise our rule accordingly:

4 CSR 240-29.010 The LEC-to-LEC Network

> The LEC-to-LEC network is that part of the telecommunications network designed and used by telecommunications companies for the purposes of originating, terminating, and transiting local, intrastate/intraLATA, interstate/intraLATA, and wireless telecommunications services that originate via the use of feature group C protocol, as defined in 4 CSR 240-29.020 (13) of this chapter. InterLATA wireline telecommunications traffic shall not be transmitted over the LEC-to-LEC network, but must originate and terminate with the use of an interexchange carrier point of presence, as defined in 4 CSR 240-29.020 (31) of this chapter. Nothing in this section shall preclude a tandem carrier from routing interLATA wireline traffic to a non-affiliated terminating carrier over the LEC-to-LEC network, provided such terminating carrier has agreed to accept such

traffic from the tandem carrier and such acceptance is contained in a Commission-approved interconnection agreement.

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May 6, 2005

Honorable Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Dear Secretary Carnahan:

Re: **4 CSR 240-29.010 The LEC-to-LEC Network**

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Department of Economic Development, Public Service Commission on this 6th day of May, 2005.

Statutory Authority: Sections 386.040 and 386.250 RSMo 2000

If there are any questions regarding the content of this order of rulemaking, please contact:

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BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission