

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1779
94TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Energy and the Environment, April 10, 2008, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

4260S.06C

AN ACT

To repeal sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.030, 319.036, 319.037, 319.041, 319.045, 319.050, 386.020, 392.200, 392.220, 392.230, 392.245, 392.361, 392.370, 392.420, 392.450, 392.451, 392.480, 392.490, 392.510, 392.515, and 392.520, RSMo, and to enact in lieu thereof twenty-seven new sections relating to utility service provision, with an effective date for certain sections.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.030, 319.036, 319.037, 319.041, 319.045, 319.050, 386.020, 392.200, 392.220, 392.230, 392.245, 392.361, 392.370, 392.420, 392.450, 392.451, 392.480, 392.490, 392.510, 392.515, and 392.520, RSMo, are repealed and twenty-seven new sections enacted in lieu thereof, to be known as sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.027, 319.029, 319.030, 319.037, 319.041, 319.042, 319.045, 319.050, 386.020, 392.200, 392.220, 392.230, 392.245, 392.361, 392.370, 392.420, 392.450, 392.451, 392.480, 392.510, 392.520, and 392.550, to read as follows:

319.015. For the purposes of sections 319.010 to 319.050, the following terms mean:

(1) "Approximate location", a strip of land not wider than the width of the underground facility plus two feet on either side thereof. In situations where reinforced concrete, multiplicity of adjacent facilities or other unusual specified conditions interfere with location attempts, the owner or operator shall designate to the best of his or her ability an approximate location of greater width;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

8 (2) **"Design request", a request from any person for facility**
9 **location information for design purposes only;**

10 (3) **"Emergency", a sudden, unexpected occurrence, presenting a**
11 **clear and imminent danger demanding immediate action to prevent or**
12 **mitigate loss or damage to life, health, property, or essential public**
13 **services. "Unexpected occurrence" includes, but is not limited to,**
14 **thunderstorms, high winds, ice or snow storms, fires, floods,**
15 **earthquakes, or other soil or geologic movements, riots, accidents,**
16 **water or wastewater pipe breaks, vandalism, or sabotage;**

17 (4) **"Excavation", any operation in which earth, rock or other material in**
18 **or on the ground is moved, removed or otherwise displaced by means of any tools,**
19 **equipment or explosives and includes, without limitation, backfilling, grading,**
20 **trenching, digging, ditching, drilling, well-drilling, augering, boring, tunneling,**
21 **scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, and**
22 **demolition of structures, except that, the use of mechanized tools and equipment**
23 **to break and remove pavement and masonry down only to the depth of such**
24 **pavement or masonry, the use of [high-velocity] pressurized air to disintegrate**
25 **and suction to remove earth, rock and other materials, [and] the tilling of soil for**
26 **agricultural or seeding purposes, and the installation of marking flags and**
27 **stakes for the location of underground facilities that are not driven**
28 **shall not be deemed excavation. Backfilling or moving earth on the ground in**
29 **connection with other excavation operations at the same site shall not be deemed**
30 **separate instances of excavation;**

31 (5) **"Excavator", any person making one or more excavations who**
32 **is required to make notices of excavation under the requirements of**
33 **sections 319.010 to 319.050;**

34 [(3)] (6) **"Marking", the use of [stakes,] paint, flags, stakes, or other**
35 **clearly identifiable materials to show the field location of underground facilities,**
36 **or the area of proposed excavation, in accordance with the color code standard of**
37 **the American Public Works Association. Unless otherwise provided by the**
38 **American Public Works Association, the following color scheme shall be used:**
39 **blue for potable water; purple for reclaimed water, irrigation and slurry lines;**
40 **green for sewers and drain lines; red for electric, power lines, cables, conduit and**
41 **lighting cables; orange for communications, including telephone, cable television,**
42 **alarm or signal lines, cable or conduit; yellow for gas, oil, steam, petroleum or**
43 **gaseous materials; white for proposed excavation; pink for temporary marking of**

44 construction project site features such as centerline and top of slope and toe of
45 slope;

46 [(4)] (7) "Notification center", a statewide organization operating
47 twenty-four hours a day, three hundred sixty-five days a year on a not-for-profit
48 basis, supported by its participants, or by more than one operator of underground
49 facilities, having as its principal purpose the statewide receipt and dissemination
50 to participating owners and operators of underground facilities of information
51 concerning intended excavation activities in the area where such owners and
52 operators have underground facilities, and open to participation by any and all
53 such owners and operators on a fair and uniform basis. Such notification center
54 shall be governed by a board of directors elected by the membership and
55 composed of representatives from each general membership group;

56 (8) "Notification center participant", an underground facility
57 owner who is a member and participant in the notification center;

58 [(5)] (9) "Permitted project", a project for which a permit for the work to
59 be performed is required to be issued by a local, state or federal agency and, as
60 a prerequisite to receiving such permit, the applicant is required to [locate all
61 underground facilities in the area of the work and in the vicinity of the
62 excavation and is required to notify each owner of such underground facilities]
63 **notify all underground facility owners in the area of the work for**
64 **purposes of identifying the location of existing underground facilities;**

65 [(6)] (10) "Person", any individual, firm, joint venture, partnership,
66 corporation, association, cooperative, municipality, political subdivision,
67 governmental unit, department or agency and shall include a notification center
68 and any trustee, receiver, assignee or personal representative thereof;

69 [(7)] (11) "Pipeline facility" includes, without limitation, new and
70 existing pipe, rights-of-way, and any equipment, facility, or building used or
71 intended for use in the transportation of gas or the treatment of gas, or used or
72 intended for use in the transportation of hazardous liquids including petroleum,
73 or petroleum products;

74 [(8)] (12) "Preengineered project", a project which is approved by an
75 agency or political subdivision of the state and for which the agency or political
76 subdivision responsible for the project, as part of its engineering and contract
77 procedures, holds a meeting prior to the commencement of any construction work
78 on such project and in such meeting all persons determined by the agency or
79 political subdivision to have underground facilities located within the excavation

80 area of the project are invited to attend and given an opportunity to verify or
81 inform any agency or political subdivision of the location of their underground
82 facilities, if any, within the excavation area and where the location of all known
83 underground facilities are duly located or noted on the engineering drawing as
84 specifications for the project;

85 [(9) "Residential property", any real estate used or intended to be used as
86 a residence by not more than four families on which no underground facilities
87 exist which are owned or operated by any party other than the owner of said
88 property;]

89 **(13) "State plane coordinates", a system of locating a point on a**
90 **flat plane developed by the National Oceanic and Atmospheric**
91 **Administration and utilized by state agencies, local governments, and**
92 **other persons to designate the site of a construction project;**

93 **(14) "Trenchless excavation", horizontal excavation parallel to**
94 **the surface of the earth which does not use trenching or vertical**
95 **digging as the primary means of excavation, including but not limited**
96 **to directional boring, tunneling, or auguring;**

97 [(10)] **(15) "Underground facility", any item of personal property which**
98 **shall be buried or placed below ground for use in connection with the storage or**
99 **conveyance of water, storm drainage, sewage, telecommunications service, cable**
100 **television service, electricity, oil, gas, hazardous liquids or other substances, and**
101 **shall include but not be limited to pipes, sewers, conduits, cables, valves, lines,**
102 **wires, manholes, attachments, or appurtenances, and those portions of pylons**
103 **or other supports below ground that are within any public or private street, road**
104 **or alley, right-of-way dedicated to the public use or utility easement of record, or**
105 **prescriptive easement[; except that where]. If gas distribution lines or electric**
106 **lines, telecommunications facilities, cable television facilities, water service lines,**
107 **water system, storm drainage or sewer system lines [are and such lines or**
108 **facilities], other than those used for vehicular traffic control, lighting of**
109 **streets and highways and communications for emergency response, are**
110 **located on private property and** are owned solely by the owner or owners of
111 such **private** property, such lines or facilities receiving service shall not be
112 considered underground facilities for purposes of this chapter[; provided,
113 however], **except at locations where they cross or lie within an easement**
114 **or right-of-way dedicated to public use or owned by a person other than**
115 **the owner of the private property. Water and sanitary sewer lines**

116 **providing service to private property that are owned solely by the**
117 **owner of such property shall not be considered underground facilities**
118 **at any location. Water, storm drainage, cross road drainage, or sewer**
119 **lines owned by the state highways and transportation commission shall**
120 **not be considered underground facilities at any location.** For railroads
121 regulated by the Federal Railroad Administration, "underground facility" as used
122 in sections 319.015 to 319.050 shall not include any excavating done by a railroad
123 when such excavating is done entirely on land which the railroad owns or on
124 which the railroad operates, or in the event of emergency, on adjacent land;

125 **(16) "Underground facility owner", any person who owns or**
126 **operates underground facilities as defined by this section;**

127 **[(11)] (17) "Working day", every day, except Saturday, Sunday or a**
128 **legally declared local, state or federal holiday.**

319.022. 1. **Any person, except a railroad regulated by the**
2 **Federal Railroad Administration, who installs or otherwise owns or**
3 **operates an underground facility shall become a participant in a**
4 **notification center upon first acquiring or owning or operating such**
5 **underground facility. All owners and operators of underground**
6 **facilities within the state shall maintain participation in a notification**
7 **center.**

8 **2.** All owners and operators of underground facilities which are located
9 in a county of the first classification or second classification within the state who
10 are not members of a notification center on August 28, 2001, shall become
11 participants in the notification center prior to January 1, 2003. Any person who
12 installs or otherwise becomes an owner or operator of an underground facility
13 which is located within a county of the first classification or second classification
14 on or after January 1, 2003, shall become a participant in the notification center
15 within thirty days of acquiring or operating such underground facility. Beginning
16 January 1, 2003, all owners and operators of underground facilities which are
17 located in a county of the first classification or second classification within the
18 state shall maintain participation in the notification center.

19 **[2.] 3.** All owners and operators of underground facilities which are
20 located in a county of the third classification or fourth classification within the
21 state who are not members of a notification center on August 28, 2001, shall
22 become participants in the notification center prior to January 1, 2005. Any
23 person who installs or otherwise becomes an owner or operator of an underground

24 facility which is located within a county of the third classification or fourth
25 classification on or after January 1, 2005, shall become a participant in the
26 notification center within thirty days of acquiring or operating such underground
27 facility. Beginning January 1, 2005, all owners and operators of underground
28 facilities which are located in a county of the third classification or fourth
29 classification within the state shall maintain participation in the notification
30 center.

31 [3.] 4. The notification center shall maintain in its offices and make
32 available to any [person] **notification center participant or excavator** upon
33 request, a current list of the names and addresses of each [owner and operator
34 participating in the] notification center **participant**, including the county or
35 counties wherein each [owner or operator] **participant** has underground
36 facilities. The notification center may charge a reasonable fee to [persons]
37 **notification center participants or excavators** requesting such list as is
38 necessary to recover the actual costs of printing and mailing.

39 [4.] 5. Excavators shall be informed of the availability of the list of
40 **notification center** participants [in the notification center] required in
41 subsection [2] 3 of this section in the manner provided for in section 319.024.

42 [5.] 6. An annual audit or review of the notification center shall be
43 performed by a certified public accountant and a report of the findings submitted
44 to the speaker of the house of representatives and the president pro tem of the
45 senate.

319.024. 1. Every person owning or operating an underground facility
2 shall assist excavators and the general public in determining the location of
3 underground facilities before excavation activities are begun or as may be
4 required by subsection 6 of section 319.026 or subsection 1 of section 319.030
5 after an excavation has commenced. Methods of informing the public and
6 excavators of the means of obtaining such information may, but need not, include
7 advertising, including advertising in periodicals of general circulation or trade
8 publications, information provided to professional or trade associations which
9 routinely provide information to excavators or design professionals, or sponsoring
10 meetings of excavators and design professionals for such purposes. Information
11 provided by the notification center on behalf of persons owning or operating an
12 underground facility shall be deemed in compliance with this section by such
13 persons. Every person owning or operating underground facilities who has a
14 written policy in determining the location of its underground facilities shall make

15 available a copy of said policy to any [person] **notification center participant**
16 **or excavator** upon request.

17 2. Every person owning or operating underground pipeline facilities shall,
18 in addition to the requirements of subsection 1 of this section:

19 (1) Identify on a current basis, persons who normally engage in excavation
20 activities in the area in which the pipeline is located. Every such person who is
21 a participant in a notification center shall be deemed to comply with this
22 subdivision if such notification center maintains and updates a list of the names
23 and addresses of all excavators who have given notice of intent to excavate to
24 such notification center during the previous [five years] **year** and provided the
25 notification center shall, not less frequently than annually, provide public
26 notification and actual notification to all excavators on such list of the existence
27 and purpose of the notification center, and procedures for obtaining information
28 from the notification center;

29 (2) Either directly or through the notification center, notify excavators and
30 the public in the vicinity of his or her underground pipeline facility of the
31 availability of the notification center by including the information set out in
32 subsection 1 of section 319.025, in notifications required by the safety rules of the
33 Missouri public service commission relating to its damage prevention program;

34 (3) Notify excavators annually who give notice of their intent to excavate
35 of the type of marking to be provided and how to identify the markings.

319.025. 1. Except as provided in [sections] **subsection 3 of section**
2 **319.030 and in section 319.050**, a person shall not make or begin any excavation
3 in any public street, road or alley, right-of-way dedicated to the public use or
4 utility easement of record or within any private street or private property without
5 first giving notice to **the notification center** and obtaining information
6 concerning the possible location of any underground facilities which may be
7 affected by said excavation from [each and every owner and operator of
8 underground facilities] **underground facility owners** whose [name appears]
9 **names appear** on the current list of participants in the notification center **and**
10 **who were communicated to the excavator as notification center**
11 **participants who would be informed of the excavation notice**. Prior to
12 January 1, 2003, a person shall not make or begin any excavation pursuant to
13 this subsection without also making notice to owners or operators of underground
14 facilities which do not participate in a notification center and whose name
15 appears on the current list of the recorder of deeds in and for the county in which

16 the excavation is to occur. Beginning January 1, 2003, notice to the notification
17 center of proposed excavation shall be deemed notice to all owners and operators
18 of underground facilities. The notice referred to in this section shall comply with
19 the provisions of section 319.026. **As part of the process to request the**
20 **locating of underground facilities and having them properly marked,**
21 **the notification center shall ask excavators to identify whether or not**
22 **the proposed excavation will be on a public right-of-way or easement**
23 **dedicated to public use for vehicular traffic.**

24 2. An excavator's notice to owners and operators of underground facilities
25 participating in the notification center pursuant to section 319.022 is ineffective
26 for purposes of subsection 1 of this section unless given to such notification
27 center. Prior to January 1, 2003, the notice required by subsection 1 of this
28 section shall be given directly to owners or operators of underground facilities
29 who are not represented by a notification center.

30 3. [If the excavator is engaged in trenching, ditching, drilling,
31 well-drilling or -driving, augering or boring and, if upon notification by the
32 excavator pursuant to section 319.026, the owner or operator notifies the
33 excavator that the area of excavation cannot be determined from the description
34 provided by the excavator, the excavator shall mark the proposed area of
35 excavation prior to marking of location by the owner or operator of the
36 facility. For any excavation, as defined in section 319.015,] **Notification center**
37 **participants shall be relieved of the responsibility to respond to a**
38 **notice of intent to excavate received directly from the person intending**
39 **to commence an excavation, except for requests for clarification of**
40 **markings through on-site meetings as provided in subsection 1 of**
41 **section 319.030 and requests for locations at the time of an emergency**
42 **as provided by section 319.050.**

43 4. If the owner or operator notifies the excavator that the area of
44 excavation cannot be determined from the description provided by the excavator
45 through the notice required by this section, [the owner or operator may require]
46 the excavator [to provide] **shall provide clarification of the area of**
47 **excavation by markings or by providing** project plans to the owner or
48 operator, or [meet] **by meeting** on the site of the excavation with representatives
49 of the owner or operator as provided by subsection 1 of section 319.030. [The
50 provisions of this subsection shall not apply to owners of residential property
51 performing excavations on their own property.]

52 **5. Notwithstanding the provisions of this section to the contrary,**
53 **a person shall not make or begin any excavation in any state highway,**
54 **or on the right-of-way of any state highway, without first obtaining a**
55 **permit from the state highways and transportation commission**
56 **pursuant to section 227.240, RSMo.**

 319.026. 1. An excavator shall serve notice of intent to excavate to the
2 notification center by toll-free telephone number operated on a twenty-four hour
3 per day, seven day per week basis or[, prior to January 1, 2003, to individual
4 nonparticipant owners or operators] **by facsimile or by completing notice via**
5 **the Internet** at least two working days, but not more than ten working days,
6 before **the expected date of** commencing the excavation activity. The
7 notification center receiving such notice shall inform the excavator of all [owners,
8 operators and other persons] **notification center participants** to whom such
9 notice will be transmitted and shall promptly transmit **all details of** such notice
10 **provided under subsection 2 of this section** to every [public utility,
11 municipal corporation and all persons owning or operating an underground
12 facility] **notification center participant** in the area of excavation [and which
13 are participants in and have registered their locations with the notification
14 center. The notification center receiving such notice shall solicit all information
15 required in subsection 2 of this section from the excavator and shall transmit all
16 details of such notice as required by this section].

17 2. [Each notice] **Notices** of intent to excavate given pursuant to this
18 section shall contain **the following information:**

19 **(1)** The name[, address] and telephone number [and facsimile number,
20 if any,] of the person filing the notice of [intent,] **excavation, if the telephone**
21 **number is different than that of the excavator, and** the name, address
22 [and], telephone number of the excavator[,] **and whether the excavator's**
23 **telephone is equipped with a recording device;**

24 **(2)** The date the excavation activity is **expected** to commence, the depth
25 of planned excavation and, if applicable, that the use of explosives is anticipated
26 on the excavation site, and the type of excavation being planned, including
27 whether the excavation involves [tunneling or horizontal boring. The notice shall
28 state whether someone is available between 8:00 a.m. and 5:00 p.m. on working
29 days at the telephone number given and whether the excavator's telephone is
30 equipped with a recording device. The notice shall also specify] **trenchless**
31 **excavation;**

32 **(3) The facsimile number, email address, and cellular telephone**
33 **number of the excavator, if any;**

34 **(4) The name of the person primarily responsible for conducting**
35 **the excavation or managing the excavation process, and if any of the**
36 **information stated in subdivisions (1) or (3) of this subsection is**
37 **different for the person primarily responsible for the excavation, the**
38 **notice shall also state the same information for that person;**

39 **(5) A detailed description accepted by the notification center**
40 **sufficient for the location of the excavation by any one or more of the following**
41 **means: by reference to a specific street address, [or by reference to specific**
42 **quarter section, and shall state whether excavation is to take place within the**
43 **city limits. The notice shall also include] or by description of location in**
44 **relation to the nearest numbered, lettered, or named state or county**
45 **road or city street for which a road sign is posted, or by latitude and**
46 **longitude including the appropriate description in degrees, minutes,**
47 **and seconds, or by state plane coordinates;**

48 **(6) A description of the site of excavation by approximate**
49 **distance and direction from the nearest state or county road or city**
50 **street or intersection of such roads or streets unless previously**
51 **provided under subdivision (5) of this subsection, and the proximity of**
52 **the site to any prominent landmarks;**

53 **(7) A description of the location or locations of the excavation at the site**
54 **described by direction and approximate distance in relation to prominent features**
55 **of the site, such as existing buildings or roadways[. For excavations occurring**
56 **outside the limits of an incorporated city, the following additional information**
57 **shall be provided: the location of the excavation in relation to the nearest**
58 **numbered, lettered or named state or county road which is posted on a road sign,**
59 **including the approximate distance from the nearest intersection or prominent**
60 **landmark; and, if the excavation is not on or near a posted numbered, lettered or**
61 **named state or county road,];**

62 **(8) Directions as to how to reach the site of the excavation from the**
63 **nearest such road, if the excavation is not on or near a posted numbered,**
64 **lettered, or named state or county road or city street.**

65 **3. The notification center receiving such notice shall solicit all information**
66 **required [in this] by subsection 2 of this section and shall require the**
67 **excavator to provide all such information before notice by the excavator is deemed**

68 to be completed pursuant to sections 319.015 to 319.050. The notification center
69 shall transmit all details of such notice as required [in subsection 1 of] **by this**
70 section.

71 [3.] 4. A [written] record of each notice of intent to excavate shall be
72 maintained by the notification center or, prior to January 1, 2003, by the
73 nonmember owner or operator receiving direct notifications for a period of five
74 years. The record shall include the date the notice was received and all
75 information required by subsection 2 of this section which was provided by the
76 excavator **and a record of the underground facility owners notified by**
77 **the notification center**. If the [recipient] **notification center** creates a
78 record of the notice by [computer or] telephonic recording, such record of the
79 original notice shall be maintained for one year from the date of
80 receipt. **Records of notices to excavate maintained by the notification**
81 **center in electronic form shall be deemed to be records under this**
82 **subsection**. Persons holding records of notices of intent to excavate and records
83 of information provided to the excavator by the notification center or owner or
84 operator of the facility, shall make copies of such records available for a
85 reasonable copying fee upon the request of the owner or operator of the
86 underground facilities or the excavator filing the notice.

87 [4.] 5. If in the course of excavation the person responsible for the
88 excavation operations discovers that the owner or operator of the underground
89 facility who is a participant in a notification center has incorrectly located the
90 underground facility, he or she shall notify the notification center which shall
91 inform the [participating owner or operator] **notification center participant**.
92 If the owner or operator of the underground facility is not a participant in a
93 notification center prior to the January 1, 2003, effective date for mandatory
94 participation pursuant to section 319.022, the person responsible for the
95 excavation shall notify the owner. The person responsible for maintaining records
96 of the location of underground facilities for the [owner or operator] **notification**
97 **center participant** shall correct such records to show the actual location of such
98 facilities, if current records are incorrect.

99 [5. Notwithstanding the fact that a project is a preengineered project or
100 a permitted project, excavators connected therewith shall be required to give
101 notification in accordance with this section prior to commencement of excavation.]

102 6. When markings have been provided in response to a notice of intent to
103 excavate, excavators may **commence or** continue to work within the area

104 described in the notice **for** so long as the markings are visible. If markings
105 become unusable due to weather, construction or other cause, the excavator shall
106 contact the notification center to request remarking. Such notice shall be given
107 in the same manner as original notice of intent to excavate, and the owner or
108 operator shall remark the site in the same manner, within the same time, as
109 required in response to an original notice of intent to excavate. Each excavator
110 shall exercise reasonable care not to unnecessarily disturb or obliterate markings
111 provided for location of underground facilities. If remarking is required due to
112 the excavator's failure to exercise reasonable care, or if repeated unnecessary
113 requests for remarking are made by an excavator even though the markings are
114 visible and usable, the excavator may be liable to the owner or operator for the
115 reasonable cost of such remarking.

319.027. 1. Any person may make design requests by contacting
2 **the notification center. Such design requests shall include all**
3 **information deemed necessary by the notification center to complete**
4 **the notice, including the identification of the person and a description**
5 **of the location of the project being designed and other information**
6 **similar to that required of excavators under section 319.026.**

7 **2. Design requests shall be made to the notification center at**
8 **least five working days, but not more than ten working days, before the**
9 **date the person has requested receiving the information from the**
10 **underground facility owner. Upon receipt of a design request, the**
11 **notification center shall inform the person of the name of all**
12 **notification center participants to whom the notice will be transmitted**
13 **and shall promptly transmit such notice to the appropriate**
14 **underground facility owners.**

15 **3. Every underground facility owner who receives a design**
16 **request shall mark the location of the facility, or contact the person**
17 **making the request, within five working days after the date the notice**
18 **was received from the notification center. If the person making the**
19 **request was contacted as an alternative to marking location, the person**
20 **and the underground facility owner shall mutually agree on a schedule**
21 **and method for providing the information.**

22 **4. No excavation may be commenced based upon information**
23 **received through a design request. Obtaining information through a**
24 **design request shall not excuse any person commencing an excavation**
25 **from making notice and obtaining information under sections 319.025**

26 **and 319.026 concerning the possible location of any underground**
27 **facilities which may be affected.**

319.029. Notwithstanding the fact that a project is a
2 **preengineered project or a permitted project, or that a design request**
3 **was previously made, excavators connected therewith shall be required**
4 **to give notification in accordance with sections 319.025 and 319.026**
5 **prior to commencement of excavation.**

319.030. 1. Every person owning or operating an underground facility to
2 whom notice of intent to excavate is required to be given shall, upon receipt of
3 such notice as provided in this section from a person intending to commence an
4 excavation, inform the excavator as promptly as practical, but not in excess of two
5 working days [from receipt of the notice], unless otherwise mutually agreed, of
6 the approximate location of underground facilities in or near the area of the
7 excavation so as to enable the person engaged in the excavation work to locate the
8 facilities in advance of and during the excavation work. **The two working days**
9 **provided for notice in this subsection and subsection 1 of section**
10 **319.026, shall begin at 12:00 a.m. following the receipt of the request by**
11 **the notification center.** If the information available to the owner or operator
12 of a pipeline facility or an underground electric or communications cable discloses
13 that valves, vaults or other appurtenances are located in or near the area of
14 excavation, the owner or operator shall either inform the excavator of the
15 approximate location of such appurtenances at the same time and in the same
16 manner as the approximate location of the remainder of the facility is provided,
17 or shall at such time inform the excavator that appurtenances exist in the area
18 and provide a telephone number through which the excavator may contact a
19 representative of the owner or operator who will meet at the site within one
20 working day after request from the excavator and at such meeting furnish the
21 excavator with the available information about the location and nature of such
22 appurtenances. If the excavator states in the notice of intent to excavate that the
23 excavation will involve [tunneling or horizontal boring] **trenchless technology,**
24 the owner or operator shall inform the excavator of the depth, to the best of his
25 or her knowledge or ability, of the facility according to the records of the owner
26 or operator. The owner or operator shall provide the approximate location of
27 underground facilities by use of markings. If **flags or** stakes are used, [staking]
28 **such marking** shall be consistent with the color code and other standards for
29 ground markings. Persons representing the excavator and the owner or operator

30 shall meet on the site of excavation within two working days of a request by
31 either person for such meeting for the purpose of clarifying markings, or upon
32 agreement of the excavator and owner or operator, such meeting may be an
33 alternate means of providing the location of facilities by originally marking the
34 approximate location of the facility at the time of the meeting. If upon receipt of
35 a notice of intent to excavate, an owner or operator determines that he or she
36 neither owns or operates underground facilities in or near the area of excavation,
37 the owner or operator shall within two working days after receipt of the notice,
38 inform the excavator that the owner or operator has no facilities located in the
39 area of the proposed excavation. [If the notice of intent to excavate provided to
40 the owner or operator of the underground facility by the notification center states
41 that a person is available at the telephone number given in the notice between
42 8:00 a.m. and 5:00 p.m. on each working day or that the excavator's telephone is
43 equipped with a recording device, or states a facsimile number for the excavator,
44 the owner or operator shall make actual notice of no facilities in the area of the
45 excavation described in the notice by one or more of the following methods:
46 calling the telephone number given between 8:00 a.m. and 5:00 p.m. on a working
47 day; leaving a message on the excavator's recording device; transmitting a
48 facsimile message to the excavator; marking "no facilities" or "clear" at the site
49 of excavation; or verbally informing the excavator at the site of excavation. If the
50 notice of intent to excavate provided to the owner or operator does not indicate
51 that a person is available at the telephone number given in the notice between
52 8:00 a.m. and 5:00 p.m. on each working day or that the excavator's telephone is
53 equipped with a recording device or that a facsimile number is provided for
54 receiving facsimile messages, then the owner or operator may attempt to notify
55 the excavator of no facilities in the area of excavation by any of the methods
56 indicated above; however, two documented attempts by the owner or operator to
57 reach such an excavator by telephone shall constitute compliance with this
58 subsection.] **The owner or operator of the underground facility shall**
59 **make notice to the excavator that no facilities are located in the area**
60 **of excavation by contacting the excavator by any of the following**
61 **methods:**

62 (1) **By calling the primary number of the excavator or by calling**
63 **the telephone number of the responsible person as provided by the**
64 **excavator under subdivision (4) of subsection 2 of section 319.026;**

65 (2) **By leaving a message on the recording device for such**

66 numbers;

67 (3) By calling the cellular telephone number of the excavator or
68 responsible person;

69 (4) By notifying the excavator by facsimile or electronic mail at
70 numbers or addresses stated by the excavator in the notice of
71 excavation made under subsection 2 of section 319.026;

72 (5) By marking "clear" or "OK" at the site of excavation; or

73 (6) By verbally informing the excavator in person.

74 If the only means of contacting the excavator is one or more telephone
75 numbers provided by the excavator in the notice of excavation under
76 section 319.026, then two attempts by the underground facility owner
77 to contact the excavator at one of the telephone numbers provided shall
78 constitute compliance with this subsection.

79 2. A record of the date and means of informing the excavator that no
80 facilities were located by the owner or operator shall be included in the written
81 records [required by subsection 3 of section 319.026] of the underground
82 facility owner regarding each specific notice of excavation.

83 [2. Owners and operators of underground facilities who are participants
84 in the notification center according to the current list maintained in the offices
85 of the notification center shall be relieved of the responsibility to respond to
86 notices of intent to excavate received directly from the person intending to
87 commence an excavation, except for requests for clarification of markings through
88 on-site meetings and requests for locations at the time of an emergency as
89 provided by section 319.050.]

90 3. In the event that a person owning or operating an underground facility
91 fails to comply with the provisions of subsection 1 of this section after notice
92 given by an excavator in compliance with section 319.026, the excavator, prior to
93 commencing the excavation, shall give a second notice to the [same entity to
94 whom the original notice was made] notification center as required by section
95 319.026 stating that there has been no response to the original notice
96 given under section 319.026. [If,] After the receipt of the [second] notice
97 stating there has been "no response", the owner or operator of an
98 underground facility [fails to provide the excavator with location information
99 during the next working day] shall, within two hours of the receipt of such
100 notice, mark its facilities or contact and inform the excavator of when
101 the facilities will be marked; provided, however, that for "no response"

102 notices made to the notification center by 2:00 p.m., the markings shall
103 be completed on the working day the notice is made to the notification
104 center, and provided that for "no response" notices made to the
105 notification center after 2:00 p.m., the markings shall be completed no
106 later than 10:00 a.m. on the next working day. If an underground
107 facility owner fails to mark its facilities or contact the excavator as
108 required by this subsection, the excavator may commence the
109 excavation. Nothing in this subsection shall excuse the excavator from exercising
110 the degree of care in making the excavation as is otherwise required by law.

111 4. For purposes of this section, a period of two working days begins [upon
112 receipt of the excavator's notice of intent to excavate or upon receipt of a request
113 for a meeting and shall end on the second working day thereafter at the same
114 time of day. If the excavator's notice of intent to excavate or a request for a
115 meeting is received on a working day before 8:00 a.m., such period of time shall
116 begin at 8:00 a.m. of that day. If the excavator's notice of intent to excavate or
117 a request for a meeting is received after 5:00 p.m. on a working day, or at any
118 time on a day that is not a working day, then such period of time shall begin at
119 8:00 a.m. of the first working day after the day of actual receipt] at 12:00 a.m.
120 following when the request is made.

319.037. 1. Notwithstanding any other provision of law to the contrary,
2 the procedures and requirements set forth in this section shall apply on the site
3 of any excavation involving [horizontal boring] **trenchless excavation**,
4 including directional drilling, where the approximate location of underground
5 facilities has been marked in compliance with section 319.030 and where any part
6 of the walls of the intended bore are within the marked approximate location of
7 the underground facility.

8 2. The excavator shall not use power-driven equipment for [horizontal
9 boring] **trenchless excavation**, including directional drilling, within the
10 marked approximate location of such underground facilities until the excavator
11 has made careful and prudent efforts to confirm the horizontal and vertical
12 location thereof in the vicinity of the proposed excavation through methods
13 appropriate to the geologic and weather conditions, and the nature of the facility,
14 such as the use of electronic locating devices, hand digging, pot holing when
15 practical, soft digging, vacuum methods, use of pressurized air or water,
16 pneumatic hand tools or other noninvasive methods as such methods are
17 developed. Such methods of confirming location shall not violate established

18 safety practices. Nothing in this subsection shall authorize any person other than
19 the owner or operator of a facility to attach an electronic locating device to any
20 underground facility. For excavations paralleling the underground facility, such
21 efforts to confirm the location of the facility shall be made at careful and prudent
22 intervals. The excavator shall also make careful and prudent efforts by such
23 means as are appropriate to the geologic and weather conditions and the nature
24 of the facility, to confirm the horizontal and vertical location of the boring device
25 during boring operations. Notwithstanding the foregoing, the excavator shall not
26 be required to confirm the horizontal or vertical location of the underground
27 facilities if the excavator, using the methods described in this section, excavates
28 a hole over the underground facilities to a depth two feet or more below the
29 planned boring path and then carefully and prudently monitors the horizontal
30 and vertical location of the boring device in a manner calculated to enable the
31 device to be visually observed by the excavator as it crosses the entire width of
32 the marked approximate location of the underground facilities.

319.041. Nothing in the foregoing shall relieve an excavator from the
2 obligation to excavate in a safe and prudent manner, nor shall it absolve an
3 excavator from liability for damage to legally installed
4 facilities. [Notwithstanding any provision of law to the contrary, nothing in this
5 chapter shall abrogate any contractual provisions entered into between any
6 railroad and any other party owning or operating an underground facility within
7 the railroad's right-of-way.]

**319.042. Notwithstanding any provision of law to the contrary,
2 nothing in this chapter shall abrogate any contractual provisions
3 entered into between any railroad and any other party owning or
4 operating an underground facility within the railroad's right-of-
5 way. For railroads regulated by the Federal Railroad Administration,
6 sections 319.015 to 319.050 shall not include any underground facility
7 owned or operated by a railroad on land which the railroad owns or
8 any excavation done by a railroad when such excavation is done
9 entirely on land which the railroad owns.**

319.045. 1. In the event of any damage or dislocation or disturbance of
2 any underground facility in connection with any excavation, the person
3 responsible for the excavation operations shall immediately notify the notification
4 center [and the owner or operator of the facility or the owner or operator, if
5 known, if it is not a participant in the notification center prior to January 1,

6 2003. On or after January 1, 2003, the responsible party shall notify the
7 notification center only]. **This subsection shall be deemed to require**
8 **reporting of any damage, dislocation, or disturbance to trace wires,**
9 **encasements, cathode protection, permanent above-ground stakes or**
10 **other such items utilized for protection of the underground facility.**

11 2. In the event of any damage or dislocation or disturbance to any
12 underground facility **or any protective devices required to be reported by**
13 **the excavator under subsection 1 of this section,** in advance of or during
14 the excavation work, the person responsible for the excavation operations shall
15 not conceal or attempt to conceal such damage or dislocation or disturbance, nor
16 shall that person attempt or make repairs to the facility unless authorized by the
17 owner or operator of the facility. In the case of sewer lines or facilities,
18 emergency temporary repairs may be made by the excavator after notification
19 without the owners' or operators' authorization to prevent further damage to the
20 facilities. Such emergency repairs shall not relieve the excavator of responsibility
21 to make notification as required by subsection 1 of this section.

22 3. Any person who violates in any material respect the provisions of
23 section 319.022, [319.023,] 319.025, 319.026, **319.029,** 319.030, 319.037, or
24 319.045 or who willfully damages an underground facility shall be liable to the
25 state of Missouri for a civil penalty of up to ten thousand dollars for each
26 violation for each day such violation persists, except that the maximum penalty
27 for violation of the provisions of sections 319.010 to 319.050 shall not exceed five
28 hundred thousand dollars for any related series of violations. An action to
29 recover such civil penalty may be brought by the attorney general or a
30 prosecuting attorney on behalf of the state of Missouri in any appropriate circuit
31 court of this state. Trial thereof shall be before the court, which shall consider
32 the nature, circumstances and gravity of the violation, and with respect to the
33 person found to have committed the violation, the degree of culpability, the
34 absence or existence of prior violations, whether the violation was a willful act,
35 the effect on ability to continue to do business, any good faith in attempting to
36 achieve compliance, ability to pay the penalty, and such other matters as justice
37 may require in determining the amount of penalty imposed.

38 4. The attorney general may bring an action in any appropriate circuit
39 court of this state for equitable relief to redress or restrain a violation by any
40 person of any provision of sections 319.010 to 319.050. The court may grant such
41 relief as is necessary or appropriate, including mandatory or prohibitive

42 injunctive relief, temporary or permanent.

319.050. The provisions of sections 319.025 and 319.026 shall not apply
2 to any [utility which is repairing or replacing any of its facilities due to damage
3 caused during an unexpected occurrence or when making an excavation at times
4 of emergency resulting from a sudden, unexpected occurrence, and presenting a
5 clear and imminent danger demanding immediate action to prevent or mitigate
6 loss or damage to life, health, property or essential public services. "Unexpected
7 occurrence" includes, but is not limited to, thunderstorms, high winds, ice or snow
8 storms, fires, floods, earthquakes, or other soil or geologic movements, riots,
9 accidents, water pipe breaks, vandalism or sabotage which cause damage to
10 surface or subsurface facilities requiring immediate repair] **excavation when**
11 **necessary due to an emergency as defined in section 319.015.** An
12 [excavator or utility] **excavation** may proceed regarding such emergency,
13 provided all reasonable precautions have been taken to protect the underground
14 facilities. In any such case, the excavator [or utility] shall give notification,
15 substantially in compliance with section 319.026, as soon as practical, and upon
16 being notified that an emergency exists, each [owner and operator of an]
17 underground facility **owner** in the area shall [immediately provide all location
18 information reasonably available to any excavator who requests the same],
19 **within two hours after receiving such notice, provide markings or**
20 **contact the excavator with any information immediately available to**
21 **assist the excavator and shall inform the excavator if not able to mark**
22 **within the two hours of when the underground facility will be marked**
23 **at the site of the emergency. The excavator may be liable to the owner**
24 **or operator for costs directly associated with the locating of any such**
25 **underground facility relating to a notification of an emergency that**
26 **does not meet the definition of "emergency" as stated in section 319.015.**

386.020. As used in this chapter, the following words and phrases mean:

2 (1) "Alternative local exchange telecommunications company", a local
3 exchange telecommunications company certified by the commission to provide
4 basic or nonbasic local telecommunications service or switched exchange access
5 service, or any combination of such services, in a specific geographic area
6 subsequent to December 31, 1995;

7 (2) "Alternative operator services company", any certificated
8 interexchange telecommunications company which receives more than forty
9 percent of its annual Missouri intrastate telecommunications service revenues

10 from the provision of operator services pursuant to operator services contracts
11 with traffic aggregators;

12 (3) "Basic interexchange telecommunications service" includes, at a
13 minimum, two-way switched voice service between points in different local calling
14 scopes as determined by the commission and shall include other services as
15 determined by the commission by rule upon periodic review and update;

16 (4) "Basic local telecommunications service", two-way switched voice
17 service within a local calling scope as determined by the commission comprised
18 of any of the following services and their recurring and nonrecurring charges:

19 (a) Multiparty, single line, including installation, touchtone dialing, and
20 any applicable mileage or zone charges;

21 (b) Assistance programs for installation of, or access to, basic local
22 telecommunications services for qualifying economically disadvantaged or
23 disabled customers or both, including, but not limited to, lifeline services and
24 link-up Missouri services for low-income customers or dual-party relay service for
25 the hearing impaired and speech impaired;

26 (c) Access to local emergency services including, but not limited to, 911
27 service established by local authorities;

28 (d) Access to basic local operator services;

29 (e) Access to basic local directory assistance;

30 (f) Standard intercept service;

31 (g) Equal access to interexchange carriers consistent with rules and
32 regulations of the Federal Communications Commission;

33 (h) One standard white pages directory listing.

34 Basic local telecommunications service does not include optional toll-free calling
35 outside a local calling scope but within a community of interest, available for an
36 additional monthly fee or the offering or provision of basic local
37 telecommunications service at private shared-tenant service locations;

38 (5) "Cable television service", the one-way transmission to subscribers of
39 video programming or other programming service and the subscriber interaction,
40 if any, which is required for the selection of such video programming or other
41 programming service;

42 (6) "Carrier of last resort", any telecommunications company which is
43 obligated to offer basic local telecommunications service to all customers who
44 request service in a geographic area defined by the commission and cannot
45 abandon this obligation without approval from the commission;

- 46 (7) "Commission", the "Public Service Commission" hereby created;
- 47 (8) "Commissioner", one of the members of the commission;
- 48 (9) "Competitive telecommunications company", a telecommunications
49 company which has been classified as such by the commission pursuant to section
50 392.361 **or 392.245**, RSMo;
- 51 (10) "Competitive telecommunications service", a telecommunications
52 service which has been classified as such by the commission pursuant to section
53 392.245, RSMo, or to section 392.361, RSMo, or which has become a competitive
54 telecommunications service pursuant to section 392.370, RSMo;
- 55 (11) "Corporation" includes a corporation, company, association and joint
56 stock association or company;
- 57 (12) "Customer-owned pay telephone", a privately owned
58 telecommunications device that is not owned, leased or otherwise controlled by
59 a local exchange telecommunications company and which provides
60 telecommunications services for a use fee to the general public;
- 61 (13) "Effective competition" shall be determined by the commission based
62 on:
- 63 (a) The extent to which services are available from alternative providers
64 in the relevant market;
- 65 (b) The extent to which the services of alternative providers are
66 functionally equivalent or substitutable at comparable rates, terms and
67 conditions;
- 68 (c) The extent to which the purposes and policies of chapter 392, RSMo,
69 including the reasonableness of rates, as set out in section 392.185, RSMo, are
70 being advanced;
- 71 (d) Existing economic or regulatory barriers to entry; and
- 72 (e) Any other factors deemed relevant by the commission and necessary
73 to implement the purposes and policies of chapter 392, RSMo;
- 74 (14) "Electric plant" includes all real estate, fixtures and personal
75 property operated, controlled, owned, used or to be used for or in connection with
76 or to facilitate the generation, transmission, distribution, sale or furnishing of
77 electricity for light, heat or power; and any conduits, ducts or other devices,
78 materials, apparatus or property for containing, holding or carrying conductors
79 used or to be used for the transmission of electricity for light, heat or power;
- 80 (15) "Electrical corporation" includes every corporation, company,
81 association, joint stock company or association, partnership and person, their

82 lessees, trustees or receivers appointed by any court whatsoever, other than a
83 railroad, light rail or street railroad corporation generating electricity solely for
84 railroad, light rail or street railroad purposes or for the use of its tenants and not
85 for sale to others, owning, operating, controlling or managing any electric plant
86 except where electricity is generated or distributed by the producer solely on or
87 through private property for railroad, light rail or street railroad purposes or for
88 its own use or the use of its tenants and not for sale to others;

89 (16) "Exchange", a geographical area for the administration of
90 telecommunications services, established and described by the tariff of a
91 telecommunications company providing basic local telecommunications service;

92 (17) "Exchange access service", a service provided by a local exchange
93 telecommunications company which enables a telecommunications company or
94 other customer to enter and exit the local exchange telecommunications network
95 in order to originate or terminate interexchange telecommunications service;

96 (18) "Gas corporation" includes every corporation, company, association,
97 joint stock company or association, partnership and person, their lessees, trustees
98 or receivers appointed by any court whatsoever, owning, operating, controlling or
99 managing any gas plant operating for public use under privilege, license or
100 franchise now or hereafter granted by the state or any political subdivision,
101 county or municipality thereof;

102 (19) "Gas plant" includes all real estate, fixtures and personal property
103 owned, operated, controlled, used or to be used for or in connection with or to
104 facilitate the manufacture, distribution, sale or furnishing of gas, natural or
105 manufactured, for light, heat or power;

106 (20) "Heating company" includes every corporation, company, association,
107 joint stock company or association, partnership and person, their lessees, trustees
108 or receivers, appointed by any court whatsoever, owning, operating, managing or
109 controlling any plant or property for manufacturing and distributing and selling,
110 for distribution, or distributing hot or cold water, steam or currents of hot or cold
111 air for motive power, heating, cooking, or for any public use or service, in any
112 city, town or village in this state; provided, that no agency or authority created
113 by or operated pursuant to an interstate compact established pursuant to section
114 70.370, RSMo, shall be a heating company or subject to regulation by the
115 commission;

116 (21) "High-cost area", a geographic area, which shall follow exchange
117 boundaries and be no smaller than an exchange nor larger than a local calling

118 scope, where the cost of providing basic local telecommunications service as
119 determined by the commission, giving due regard to recovery of an appropriate
120 share of joint and common costs as well as those costs related to carrier of last
121 resort obligations, exceeds the rate for basic local telecommunications service
122 found reasonable by the commission;

123 (22) "Incumbent local exchange telecommunications company", a local
124 exchange telecommunications company authorized to provide basic local
125 telecommunications service in a specific geographic area as of December 31, 1995,
126 or a successor in interest to such a company;

127 (23) **"Interconnected voice over Internet protocol service", service**
128 **that:**

129 (a) **Enables real-time, two-way voice communications;**

130 (b) **Requires a broadband connection from the user's location;**

131 (c) **Requires Internet protocol-compatible customer premises**
132 **equipment; and**

133 (d) **Permits users generally to receive calls that originate on the**
134 **public switched telephone network and to terminate calls to the public**
135 **switched telephone network;**

136 (24) "Interexchange telecommunications company", any company engaged
137 in the provision of interexchange telecommunications service;

138 [(24)] (25) "Interexchange telecommunications service",
139 telecommunications service between points in two or more exchanges;

140 [(25)] (26) "InterLATA", interexchange telecommunications service
141 between points in different local access and transportation areas;

142 [(26)] (27) "IntraLATA", interexchange telecommunications service
143 between points within the same local access and transportation area;

144 [(27)] (28) "Light rail" includes every rail transportation system in which
145 one or more rail vehicles are propelled electrically by overhead catenary wire
146 upon tracks located substantially within an urban area and are operated
147 exclusively in the transportation of passengers and their baggage, and including
148 all bridges, tunnels, equipment, switches, spurs, tracks, stations, used in
149 connection with the operation of light rail;

150 [(28)] (29) "Line" includes route;

151 [(29)] (30) "Local access and transportation area" or "LATA", contiguous
152 geographic area approved by the U.S. District Court for the District of Columbia
153 in United States v. Western Electric, Civil Action No. 82-0192 that defines the

154 permissible areas of operations for the Bell Operating companies;

155 [(30)] (31) "Local exchange telecommunications company", any company
156 engaged in the provision of local exchange telecommunications service. A local
157 exchange telecommunications company shall be considered a "large local exchange
158 telecommunications company" if it has at least one hundred thousand access lines
159 in Missouri and a "small local exchange telecommunications company" if it has
160 less than one hundred thousand access lines in Missouri;

161 [(31)] (32) "Local exchange telecommunications service",
162 telecommunications service between points within an exchange;

163 [(32)] (33) "Long-run incremental cost", the change in total costs of the
164 company of producing an increment of output in the long run when the company
165 uses least cost technology, and excluding any costs that, in the long run, are not
166 brought into existence as a direct result of the increment of output. The relevant
167 increment of output shall be the level of output necessary to satisfy total current
168 demand levels for the service in question, or, for new services, demand levels that
169 can be demonstrably anticipated;

170 [(33)] (34) "Municipality" includes a city, village or town;

171 [(34)] (35) "Nonbasic telecommunications services" shall be all regulated
172 telecommunications services other than basic local and exchange access
173 telecommunications services, and shall include the services identified in
174 paragraphs (d) and (e) of subdivision (4) of this section. Any retail
175 telecommunications service offered for the first time after August 28, 1996, shall
176 be classified as a nonbasic telecommunications service, including any new service
177 which does not replace an existing service;

178 [(35)] (36) "Noncompetitive telecommunications company", a
179 telecommunications company other than a competitive telecommunications
180 company or a transitionally competitive telecommunications company;

181 [(36)] (37) "Noncompetitive telecommunications service", a
182 telecommunications service other than a competitive or transitionally competitive
183 telecommunications service;

184 [(37)] (38) "Operator services", operator-assisted interexchange
185 telecommunications service by means of either human or automated call
186 intervention and includes, but is not limited to, billing or completion of calling
187 card, collect, person-to-person, station-to-station or third number billed calls;

188 [(38)] (39) "Operator services contract", any agreement between a traffic
189 aggregator and a certificated interexchange telecommunications company to

190 provide operator services at a traffic aggregator location;

191 [(39)] **(40)** "Person" includes an individual, and a firm or copartnership;

192 [(40)] **(41)** "Private shared tenant services" includes the provision of
193 telecommunications and information management services and equipment within
194 a user group located in discrete private premises as authorized by the commission
195 by a commercial-shared services provider or by a user association, through
196 privately owned customer premises equipment and associated data processing and
197 information management services and includes the provision of connections to the
198 facilities of local exchange telecommunications companies and to interexchange
199 telecommunications companies;

200 [(41)] **(42)** "Private telecommunications system", a telecommunications
201 system controlled by a person or corporation for the sole and exclusive use of such
202 person, corporation or legal or corporate affiliate thereof;

203 [(42)] **(43)** "Public utility" includes every pipeline corporation, gas
204 corporation, electrical corporation, telecommunications company, water
205 corporation, heat or refrigerating corporation, and sewer corporation, as these
206 terms are defined in this section, and each thereof is hereby declared to be a
207 public utility and to be subject to the jurisdiction, control and regulation of the
208 commission and to the provisions of this chapter;

209 [(43)] **(44)** "Railroad" includes every railroad and railway, other than
210 street railroad or light rail, by whatsoever power operated for public use in the
211 conveyance of persons or property for compensation, with all bridges, ferries,
212 tunnels, equipment, switches, spurs, tracks, stations, real estate and terminal
213 facilities of every kind used, operated, controlled or owned by or in connection
214 with any such railroad;

215 [(44)] **(45)** "Railroad corporation" includes every corporation, company,
216 association, joint stock company or association, partnership and person, their
217 lessees, trustees or receivers appointed by any court whatsoever, owning, holding,
218 operating, controlling or managing any railroad or railway as defined in this
219 section, or any cars or other equipment used thereon or in connection therewith;

220 [(45)] **(46)** "Rate", every individual or joint rate, fare, toll, charge,
221 reconsigning charge, switching charge, rental or other compensation of any
222 corporation, person or public utility, or any two or more such individual or joint
223 rates, fares, tolls, charges, reconsigning charges, switching charges, rentals or
224 other compensations of any corporation, person or public utility or any schedule
225 or tariff thereof;

226 [(46)] (47) "Resale of telecommunications service", the offering or
227 providing of telecommunications service primarily through the use of services or
228 facilities owned or provided by a separate telecommunications company, but does
229 not include the offering or providing of private shared tenant services;

230 [(47)] (48) "Service" includes not only the use and accommodations
231 afforded consumers or patrons, but also any product or commodity furnished by
232 any corporation, person or public utility and the plant, equipment, apparatus,
233 appliances, property and facilities employed by any corporation, person or public
234 utility in performing any service or in furnishing any product or commodity and
235 devoted to the public purposes of such corporation, person or public utility, and
236 to the use and accommodation of consumers or patrons;

237 [(48)] (49) "Sewer corporation" includes every corporation, company,
238 association, joint stock company or association, partnership or person, their
239 lessees, trustees or receivers appointed by any court, owning, operating,
240 controlling or managing any sewer system, plant or property, for the collection,
241 carriage, treatment, or disposal of sewage anywhere within the state for gain,
242 except that the term shall not include sewer systems with fewer than twenty-five
243 outlets;

244 [(49)] (50) "Sewer system" includes all pipes, pumps, canals, lagoons,
245 plants, structures and appliances, and all other real estate, fixtures and personal
246 property, owned, operated, controlled or managed in connection with or to
247 facilitate the collection, carriage, treatment and disposal of sewage for municipal,
248 domestic or other beneficial or necessary purpose;

249 [(50)] (51) "Street railroad" includes every railroad by whatsoever type
250 of power operated, and all extensions and branches thereof and supplementary
251 facilities thereto by whatsoever type of vehicle operated, for public use in the
252 conveyance of persons or property for compensation, mainly providing local
253 transportation service upon the streets, highways and public places in a
254 municipality, or in and adjacent to a municipality, and including all cars, buses
255 and other rolling stock, equipment, switches, spurs, tracks, poles, wires, conduits,
256 cables, subways, tunnels, stations, terminals and real estate of every kind used,
257 operated or owned in connection therewith but this term shall not include light
258 rail as defined in this section; and the term "street railroad" when used in this
259 chapter shall also include all motor bus and trolley bus lines and routes and
260 similar local transportation facilities, and the rolling stock and other equipment
261 thereof and the appurtenances thereto, when operated as a part of a street

262 railroad or trolley bus local transportation system, or in conjunction therewith or
263 supplementary thereto, but such term shall not include a railroad constituting or
264 used as part of a trunk line railroad system and any street railroad as defined
265 above which shall be converted wholly to motor bus operation shall nevertheless
266 continue to be included within the term "street railroad" as used herein;

267 [(51)] **(52)** "Telecommunications company" includes telephone
268 corporations as that term is used in the statutes of this state and every
269 corporation, company, association, joint stock company or association, partnership
270 and person, their lessees, trustees or receivers appointed by any court
271 whatsoever, owning, operating, controlling or managing any facilities used to
272 provide telecommunications service for hire, sale or resale within this state;

273 [(52)] **(53)** "Telecommunications facilities" includes lines, conduits, ducts,
274 poles, wires, cables, crossarms, receivers, transmitters, instruments, machines,
275 appliances and all devices, real estate, easements, apparatus, property and routes
276 used, operated, controlled or owned by any telecommunications company to
277 facilitate the provision of telecommunications service;

278 [(53)] **(54)** "Telecommunications service", the transmission of information
279 by wire, radio, optical cable, electronic impulses, or other similar means. As used
280 in this definition, "information" means knowledge or intelligence represented by
281 any form of writing, signs, signals, pictures, sounds, or any other
282 symbols. Telecommunications service does not include:

283 (a) The rent, sale, lease, or exchange for other value received of customer
284 premises equipment except for customer premises equipment owned by a
285 telephone company certificated or otherwise authorized to provide telephone
286 service prior to September 28, 1987, and provided under tariff or in inventory on
287 January 1, 1983, which must be detariffed no later than December 31, 1987, and
288 thereafter the provision of which shall not be a telecommunications service, and
289 except for customer premises equipment owned or provided by a
290 telecommunications company and used for answering 911 or emergency calls;

291 (b) Answering services and paging services;

292 (c) The offering of radio communication services and facilities when such
293 services and facilities are provided under a license granted by the Federal
294 Communications Commission under the commercial mobile radio services rules
295 and regulations;

296 (d) Services provided by a hospital, hotel, motel, or other similar business
297 whose principal service is the provision of temporary lodging through the owning

298 or operating of message switching or billing equipment solely for the purpose of
299 providing at a charge telecommunications services to its temporary patients or
300 guests;

301 (e) Services provided by a private telecommunications system;

302 (f) Cable television service;

303 (g) The installation and maintenance of inside wire within a customer's
304 premises;

305 (h) Electronic publishing services; [or]

306 (i) Services provided pursuant to a broadcast radio or television license
307 issued by the Federal Communications Commission; **or**

308 **(j) Interconnected voice over Internet protocol service;**

309 [(54)] **(55)** "Telephone cooperative", every corporation defined as a
310 telecommunications company in this section, in which at least ninety percent of
311 those persons and corporations subscribing to receive local telecommunications
312 service from the corporation own at least ninety percent of the corporation's
313 outstanding and issued capital stock and in which no subscriber owns more than
314 two shares of the corporation's outstanding and issued capital stock;

315 [(55)] **(56)** "Traffic aggregator", any person, firm, partnership or
316 corporation which furnishes a telephone for use by the public and includes, but
317 is not limited to, telephones located in rooms, offices and similar locations in
318 hotels, motels, hospitals, colleges, universities, airports and public or
319 customer-owned pay telephone locations, whether or not coin operated;

320 [(56)] **(57)** "Transitionally competitive telecommunications company", an
321 interexchange telecommunications company which provides any noncompetitive
322 or transitionally competitive telecommunications service, except for an
323 interexchange telecommunications company which provides only noncompetitive
324 telecommunications service;

325 [(57)] **(58)** "Transitionally competitive telecommunications service", a
326 telecommunications service offered by a noncompetitive or transitionally
327 competitive telecommunications company and classified as transitionally
328 competitive by the commission pursuant to section 392.361 or 392.370, RSMo;

329 [(58)] **(59)** "Water corporation" includes every corporation, company,
330 association, joint stock company or association, partnership and person, their
331 lessees, trustees, or receivers appointed by any court whatsoever, owning,
332 operating, controlling or managing any plant or property, dam or water supply,
333 canal, or power station, distributing or selling for distribution, or selling or

334 supplying for gain any water;

335 [(59)] **(60)** "Water system" includes all reservoirs, tunnels, shafts, dams,
336 dikes, headgates, pipes, flumes, canals, structures and appliances, and all other
337 real estate, fixtures and personal property, owned, operated, controlled or
338 managed in connection with or to facilitate the diversion, development, storage,
339 supply, distribution, sale, furnishing or carriage of water for municipal, domestic
340 or other beneficial use.

 392.200. 1. Every telecommunications company shall furnish and provide
2 with respect to its business such instrumentalities and facilities as shall be
3 adequate and in all respects just and reasonable. All charges made and
4 demanded by any telecommunications company for any service rendered or to be
5 rendered in connection therewith shall be just and reasonable and not more than
6 allowed by law or by order or decision of the commission. Every unjust or
7 unreasonable charge made or demanded for any such service or in connection
8 therewith or in excess of that allowed by law or by order or decision of the
9 commission is prohibited and declared to be unlawful.

10 2. No telecommunications company shall directly or indirectly or by any
11 special rate, rebate, drawback or other device or method charge, demand, collect
12 or receive from any person or corporation a greater or less compensation for any
13 service rendered or to be rendered with respect to telecommunications or in
14 connection therewith, except as authorized in this chapter, than it charges,
15 demands, collects or receives from any other person or corporation for doing a like
16 and contemporaneous service with respect to telecommunications under the same
17 or substantially the same circumstances and conditions. Promotional programs
18 for telecommunications services may be offered by telecommunications companies
19 for periods of time so long as the offer is otherwise consistent with the provisions
20 of this chapter and approved by the commission. Neither this subsection nor
21 subsection 3 of this section shall be construed to prohibit an economy rate
22 telephone service offering. This section and section 392.220 to the contrary
23 notwithstanding, the commission is authorized to approve tariffs filed by local
24 exchange telecommunications companies which elect to provide reduced charges
25 for residential telecommunications connection services pursuant to the lifeline
26 connection assistance plan as promulgated by the federal communications
27 commission. Eligible subscribers for such connection services shall be those as
28 defined by participating local exchange telecommunications company tariffs.

29 3. No telecommunications company shall make or give any undue or

30 unreasonable preference or advantage to any person, corporation or locality, or
31 subject any particular person, corporation or locality to any undue or
32 unreasonable prejudice or disadvantage in any respect whatsoever except that
33 telecommunications messages may be classified into such classes as are just and
34 reasonable, and different rates may be charged for the different classes of
35 messages.

36 4. (1) No telecommunications company may define a telecommunications
37 service as a different telecommunications service based on the geographic area
38 or other market segmentation within which such telecommunications service is
39 offered or provided, unless the telecommunications company makes application
40 and files a tariff or tariffs which propose relief from this subsection. Any such
41 tariff shall be subject to the provisions of sections 392.220 and 392.230 and in any
42 hearing thereon the burden shall be on the telecommunications company to show,
43 by clear and convincing evidence, that the definition of such service based on the
44 geographic area or other market within which such service is offered is
45 reasonably necessary to promote the public interest and the purposes and policies
46 of this chapter.

47 (2) It is the intent of this act to bring the benefits of competition to all
48 customers and to ensure that incumbent and alternative local exchange
49 telecommunications companies have the opportunity to price and market
50 telecommunications services to all prospective customers in any geographic area
51 in which they compete. To promote the goals of the federal Telecommunications
52 Act of 1996, **for an alternative local exchange telecommunications**
53 **company or** for an incumbent local exchange telecommunications company in
54 any exchange where an **incumbent local exchange telecommunications**
55 **company has been classified competitive under sections 392.245 and**
56 **392.361, an** alternative local exchange telecommunications company has been
57 certified and is providing basic local telecommunications services or switched
58 exchange access services, or [for an alternative local exchange
59 telecommunications company] **an interconnected voice over Internet**
60 **protocol service provider has been registered and is providing local**
61 **voice service**, the commission shall review and approve or reject, within
62 forty-five days of filing, tariffs for proposed different services as follows:

63 (a) For services proposed on an exchange-wide basis, it shall be presumed
64 that a tariff which defines and establishes prices for a local exchange
65 telecommunications service or exchange access service as a different

66 telecommunications service in the geographic area, no smaller than an exchange,
67 within which such local exchange telecommunications service or exchange access
68 service is offered is reasonably necessary to promote the public interest and the
69 purposes and policies of this chapter;

70 (b) For services proposed in a geographic area smaller than an exchange
71 or other market segmentation within which or to whom such telecommunications
72 service is proposed to be offered, a local exchange telecommunications company
73 may petition the commission to define and establish a local exchange
74 telecommunications service or exchange access service as a different local
75 exchange telecommunications service or exchange access service. The commission
76 shall approve such a proposal unless it finds that such service in a smaller
77 geographic area or such other market segmentation is contrary to the public
78 interest or is contrary to the purposes of this chapter. Upon approval of such a
79 smaller geographic area or such other market segmentation for a different service
80 for one local exchange telecommunications company, all other local exchange
81 telecommunications companies certified to provide service in that exchange may
82 file a tariff to use such smaller geographic area or such other market
83 segmentation to provide that service;

84 (c) For proposed different services described in paragraphs (a) and (b) of
85 this subdivision, the local exchange telecommunications company which files a
86 tariff to provide such service shall provide the service to all similarly situated
87 customers, upon request in accordance with that company's approved tariff, in the
88 exchange or geographic area smaller than an exchange or such other market
89 segmentation for which the tariff was filed, and no price proposed for such service
90 by an incumbent local exchange telecommunications company, other than for a
91 competitive service, shall be lower than its long-run incremental cost, as defined
92 in section 386.020, RSMo;

93 (3) The commission, on its own motion or upon motion of the public
94 counsel, may by order, after notice and hearing, define a telecommunications
95 service offered or provided by a telecommunications company as a different
96 telecommunications service dependent upon the geographic area or other market
97 within which such telecommunications service is offered or provided and apply
98 different service classifications to such service only upon a finding, based on clear
99 and convincing evidence, that such different treatment is reasonably necessary
100 to promote the public interest and the purposes and policies of this chapter.

101 5. No telecommunications company may charge a different price per

102 minute or other unit of measure for the same, substitutable, or equivalent
103 interexchange telecommunications service provided over the same or equivalent
104 distance between two points without filing a tariff for the offer or provision of
105 such service pursuant to sections 392.220 and 392.230. In any proceeding under
106 sections 392.220 and 392.230 wherein a telecommunications company seeks to
107 charge a different price per minute or other unit of measure for the same,
108 substitutable, or equivalent interexchange service, the burden shall be on the
109 subject telecommunications company to show that such charges are in the public
110 interest and consistent with the provisions and purposes of this chapter. The
111 commission may modify or prohibit such charges if the subject
112 telecommunications company fails to show that such charges are in the public
113 interest and consistent with the provisions and purposes of this chapter. This
114 subsection shall not apply to reasonable price discounts based on the volume of
115 service provided, so long as such discounts are nondiscriminatory and offered
116 under the same rates, terms, and conditions throughout a telecommunications
117 company's certificated or service area.

118 6. Every telecommunications company operating in this state shall
119 receive, transmit and deliver, without discrimination or delay, the conversations
120 and messages of every other telecommunications company with whose facilities
121 a connection may have been made.

122 7. The commission shall have power to provide the limits within which
123 telecommunications messages shall be delivered without extra charge.

124 8. Customer-specific pricing is authorized on an equal basis for incumbent
125 and alternative local exchange companies, and for interexchange
126 telecommunications companies for:

127 (1) Dedicated, nonswitched, private line and special access services;

128 (2) Central office-based switching systems which substitute for customer
129 premise, private branch exchange (PBX) services; and

130 (3) Any business service offered in an exchange in which basic local
131 telecommunications service offered [to business customers] by the incumbent
132 local exchange telecommunications company has been declared competitive under
133 section 392.245, **and any retail business service offered to an end-user in**
134 **a noncompetitive exchange.**

135 9. This act shall not be construed to prohibit the commission, upon
136 determining that it is in the public interest, from altering local exchange
137 boundaries, provided that the incumbent local exchange telecommunications

138 company or companies serving each exchange for which the boundaries are
139 altered provide notice to the commission that the companies approve the
140 alteration of exchange boundaries.

141 10. Notwithstanding any other provision of this section, every
142 telecommunications company is authorized to offer term agreements of up to five
143 years on any of its telecommunications services.

144 11. Notwithstanding any other provision of this section, every
145 telecommunications company is authorized to offer discounted rates or special
146 promotions on any of its telecommunications services to any existing, new, and/or
147 former customers.

148 12. Packages of services may be offered on an equal basis by incumbent
149 and alternative local exchange companies and shall not be subject to regulation
150 under section 392.240 or 392.245, nor shall packages of services be subject to the
151 provisions of subsections 1 through 5 of this section, provided that each
152 telecommunications service included in a package is available apart from the
153 package of services and still subject to regulation under section 392.240 or
154 392.245. For the purposes of this subsection, a "package of services" includes
155 more than one telecommunications service or one or more telecommunications
156 service combined with one or more nontelecommunications service. **Any tariff**
157 **to introduce a new package or to make any change to an existing**
158 **package, except for the elimination of a package, shall be filed, on an**
159 **informational basis, with the commission at least one day prior to the**
160 **introduction of such new package or implementation of such**
161 **change. Any tariff to eliminate an existing package shall be filed, on an**
162 **informational basis, with the commission at least ten days prior to the**
163 **elimination of the package.**

392.220. 1. Every telecommunications company shall print and file with
2 the commission schedules showing the rates, rentals and charges for service of
3 each and every kind by or over its facilities between points in this state and
4 between each point upon its facilities and all points upon all facilities leased or
5 operated by it and between each point upon its facilities or upon any facility
6 leased or operated by it and all points upon the line of any other
7 telecommunications company whenever a through service or joint rate shall have
8 been established between any two points. If no joint rate over through facilities
9 has been established, the several companies joined over such through facilities
10 shall file with the commission the separately established rates and charges

11 applicable where through service is afforded. Such schedule shall plainly state
12 the places between which telecommunications service will be rendered and shall
13 also state separately all charges and all privileges or facilities granted or allowed
14 and any rules or regulations or forms of contract which may in any wise change,
15 affect or determine any or the aggregate of the rates, rentals or charges for the
16 service rendered. Such schedule shall be plainly printed and kept open to public
17 inspection. The commission shall have the power to prescribe the form of every
18 such schedule and may from time to time prescribe, by order, changes in the form
19 thereof. The commission shall also have power to establish rules and regulations
20 for keeping such schedules open to public inspection and may from time to time
21 modify the same. Every telecommunications company shall file with the
22 commission as and when required by it a copy of any contract, agreement or
23 arrangement in writing with any other telecommunications company or with any
24 other corporation, association or person relating in any way to the construction,
25 maintenance or use of telecommunications facilities or service by or rates and
26 charges over or upon any facilities.

27 2. Unless the commission otherwise orders, and except for the rates
28 charged by a telephone cooperative for providing telecommunications service
29 within an exchange or within a local calling scope as determined by the
30 commission other than the rates for exchange access service, no change shall be
31 made in any rate, charge or rental, or joint rate, charge or rental which shall
32 have been filed by a telecommunications company in compliance with the
33 requirements of sections 392.190 to 392.530, except after thirty days' notice to the
34 commission, which notice shall plainly state the changes proposed to be made in
35 the schedule then in force and the time when the changed rate, charge or rental
36 shall go into effect; and all proposed changes shall be shown by filing new
37 schedules or shall be plainly indicated upon the schedules filed and in force at the
38 time and kept open to public inspection. The commission for good cause shown
39 may allow changes in rates, charges or rentals without requiring the thirty days'
40 notice, under such conditions as it may prescribe. All such changes shall be
41 immediately indicated upon its schedules by such telecommunications company.
42 No telecommunications company shall charge, demand, collect or receive a
43 different compensation for any service rendered or to be rendered than the charge
44 applicable to such service as specified in its schedule on file and in effect at that
45 time. No telecommunications company shall refund or remit directly or indirectly
46 any portion of the rate or charge so specified, nor extend to any person or

47 corporation any form of contract or agreement, or any rule or regulation, or any
48 privilege or facility other than such privileges and facilities as are contemplated
49 by sections 392.200, 392.245, and 392.455, except such as are specified in its
50 schedule filed and in effect at the time and regularly and uniformly extended to
51 all persons and corporations under like circumstances for a like or substantially
52 similar service.

53 3. No telecommunications company subject to the provisions of this law
54 shall, directly or indirectly, give any free or reduced service, or any free pass or
55 frank for the provision of telecommunications services between points within this
56 state, except to its officers, employees, agents, surgeons, physicians, attorneys at
57 law and their families; to persons or corporations exclusively engaged in
58 charitable and eleemosynary work and ministers of religions; to officers and
59 employees of other telegraph corporations and telephone corporations, railroad
60 corporations and street railroad corporations; public education institutions, public
61 libraries and not-for-profit health care institutions. This subsection shall not
62 apply to state, municipal or federal contracts.

63 4. Any proposed rate or charge for any new telecommunications service
64 which has not previously been provided by a telecommunications company to its
65 Missouri customers may be suspended by the commission for a period not to
66 exceed ~~[sixty]~~ **thirty** days from the proposed effective date of such proposed rate
67 or charge. This subsection shall not be applicable to any new price or method of
68 pricing for a service presently being offered by any telecommunications company
69 to its Missouri customers. Upon proposing a rate or charge for a
70 telecommunications service which has not previously been provided by a
71 telecommunications company to its Missouri customers, the offeror must file with
72 the commission its justification for considering such offering a new service and
73 such other information as may be required by rule or regulation, and must
74 identify that service as being noncompetitive, transitionally competitive or
75 competitive. If the offeror is a noncompetitive or transitionally competitive
76 telecommunications company and it proposes such service as a transitionally
77 competitive or competitive telecommunications service, the telecommunications
78 service shall be treated as a transitionally competitive telecommunications service
79 until such time as the commission finally determines the appropriate
80 classification. If the offeror is a competitive telecommunications company and it
81 proposes such service as a competitive service, the competitive classification
82 proposed by the offeror of the service shall apply until such time as the

83 commission finally determines the appropriate classification. Such final
84 determination by the commission of the appropriate classification of such service
85 may be made by the commission after the end of the maximum [sixty-day] **thirty-**
86 **day** suspension period, but any such decision by the commission issued after the
87 maximum [sixty-day] **thirty-day** suspension period shall be prospective in
88 nature. The commission shall expedite proceedings under this subsection in order
89 to facilitate the rapid introduction of new telecommunications products and
90 services into the marketplace.

91 5. Unless the commission otherwise orders, any change in rates or
92 charges, or change in any classification or tariff resulting in a change in rates or
93 charges, for any telephone cooperative shall be filed, on an informational basis,
94 with the commission at least thirty days prior to the date for implementation of
95 such change. Nothing contained in this section shall be construed as conferring
96 jurisdiction upon the commission over the rates charged by a telephone
97 cooperative for providing telecommunications service within an exchange or
98 within a local calling scope as determined by the commission, except for exchange
99 access service.

100 6. If after notice and hearing, the commission determines that a
101 telecommunications company has violated the requirements of section 392.200 or
102 this section, it may revoke the certificate of service authority under which that
103 telecommunications company operates and shall direct its general counsel to
104 initiate an action under section 386.600, RSMo, to recover penalties from such
105 telecommunications company in an amount not to exceed the revenues received
106 as a result of such violation multiplied by three or the gross jurisdictional
107 operating revenues of that company for the preceding twelve months, the
108 provisions of section 386.570, RSMo, notwithstanding.

392.230. 1. No telecommunications company subject to the provisions of
2 this chapter shall charge or receive any greater compensation in the aggregate
3 for the transmission of any interexchange telecommunications service offered or
4 provided for a shorter than for a longer distance over the same line or route in
5 the same direction, within this state, the shorter being included within the longer
6 distance, or charge any greater compensation for a through interexchange
7 telecommunications service than the aggregate of the intermediate rates or tolls
8 subject to the provisions of this chapter; but this shall not be construed as
9 authorizing any such telecommunications company to charge or receive as great
10 a compensation for a shorter as for a longer distance.

11 2. Upon application to the commission, a telecommunications company
12 may, in special cases, after investigation, be authorized by the commission to
13 charge less for a longer than for a shorter distance service for the transmission
14 of messages or conversations, and the commission may from time to time
15 prescribe the extent to which such telecommunications companies may be relieved
16 from the operation and requirements of this section.

17 3. Whenever there shall be filed with the commission by any
18 telecommunications company, other than a small telephone company, any
19 schedule stating a new individual or joint rate, rental or charge, or any new
20 individual or joint regulation or practice affecting any rate, rental or charge, the
21 commission shall have, and it is hereby given, authority, either upon complaint
22 or upon its own initiative without complaint, at once, and if it so orders without
23 answer or other formal pleading by the interested telecommunications company
24 or companies, but upon reasonable notice, to enter upon a hearing concerning the
25 propriety of such rate, rental, charge, regulation or practice; and pending such
26 hearing and the decision thereon the commission, upon filing with such schedule
27 and delivering to the telecommunications company affected thereby a statement
28 in writing of its reasons for such suspension, may suspend the operation of such
29 schedule and defer the use of such rate, rental, charge, regulation or practice, but
30 not for a longer period than ~~[one hundred and twenty]~~ **sixty** days beyond the
31 time when such rate, rental, charge, regulation or practice would otherwise go
32 into effect; and after full hearing, whether completed before or after the rate,
33 rental, charge, regulation or practice goes into effect, the commission may make
34 such order in reference to such rate, rental, charge, regulation or practice as
35 would be proper in a proceeding initiated after the rate, rental, charge, regulation
36 or practice had become effective, however, if any such hearing cannot be
37 concluded within the period of suspension, as above stated, the commission may,
38 in its discretion, extend the time of suspension for a further period not exceeding
39 ~~[six months]~~ **ninety days**.

40 4. For the purposes of this section, a "small telephone company" is defined
41 as a local exchange telecommunications company which serves no more than
42 twenty-five thousand subscriber access lines in the state of Missouri.

43 5. Whenever a small telephone company seeks to implement any new
44 individual or joint rate, rental or charge, or any individual or joint regulation or
45 practice affecting any rate, rental or charge, it shall file same with the
46 commission and notify its customers of such change at least thirty days in

47 advance of the date on which the new rate, rental, charge, regulation or practice
48 is proposed to become effective. Upon the filing by a small telephone company of
49 any new individual or joint rate, rental or charge, or any new individual or joint
50 regulation or practice affecting any rate, rental or charge, the commission shall
51 have, and it is hereby given, authority, either upon complaint or upon its own
52 initiative without complaint, at once, and if it so orders without answer or other
53 formal pleading by the interested small telephone company or companies, but
54 upon reasonable notice, to enter upon a hearing concerning the propriety of such
55 rate, rental, charge, regulation or practice; and pending such hearing and the
56 decision thereon the commission, upon filing with such schedule and delivering
57 to the small telephone company affected thereby a statement in writing of its
58 reasons for such suspension, may suspend the operation of such schedule and
59 defer the use of such rate, rental, charge, regulation or practice, but not for a
60 longer period than one hundred fifty days beyond the time when such rate, rental,
61 charge, regulation or practice would otherwise go into effect. If the commission
62 fails to issue its decision within the one-hundred-fifty-day suspension period, the
63 investigation shall be closed and the rate, rental, charge, regulation or practice
64 shall be considered approved for all purposes.

65 6. At any hearing involving a rate increased or a rate sought to be
66 increased after the passage of this law, the burden of proof to show that the
67 increased rate or proposed increased rate is just and reasonable shall be upon the
68 telecommunications company, and the commission shall give to the hearing and
69 decision of such questions preference over all other questions pending before it
70 and decide the same as speedily as possible.

392.245. 1. The commission shall have the authority to ensure that rates,
2 charges, tolls and rentals for telecommunications services are just, reasonable
3 and lawful by employing price cap regulation. Any rate, charge, toll, or rental
4 that does not exceed the maximum allowable price under this section shall be
5 deemed to be just, reasonable, and lawful. As used in this chapter, "price cap
6 regulation" shall mean establishment of maximum allowable prices for
7 telecommunications services offered by an incumbent local exchange
8 telecommunications company, which maximum allowable prices shall not be
9 subject to increase except as otherwise provided in this section.

10 2. A large incumbent local exchange telecommunications company shall
11 be subject to regulation under this section upon a determination by the
12 commission that an alternative local exchange telecommunications company has

13 been certified to provide basic local telecommunications service **or an**
14 **interconnected voice over Internet protocol service provider has been**
15 **registered to provide service under section 392.550**, and is providing such
16 service in any part of the large incumbent company's service area. A small
17 incumbent local exchange telecommunications company may elect to be regulated
18 under this section upon providing written notice to the commission if an
19 alternative local exchange telecommunications company has been certified to
20 provide basic local telecommunications service **or an interconnected voice**
21 **over Internet protocol service provider has been registered to provide**
22 **service under section 392.550**, and is providing such service, or if two or more
23 commercial mobile service providers providing wireless two-way voice
24 communications services are providing services, in any part of the small
25 incumbent company's service area, and the incumbent company shall remain
26 subject to regulation under this section after such election.

27 3. Except as otherwise provided in this section, the maximum allowable
28 prices established for a company under subsection 1 of this section shall be those
29 in effect on December thirty-first of the year preceding the year in which the
30 company is first subject to regulation under this section. Tariffs authorized
31 under subsection 9 of this section shall be phased in as provided under such
32 tariffs as approved by the commission.

33 4. (1) Except as otherwise provided in subsections 8 and 9 of this section
34 and section 392.248, the maximum allowable prices for exchange access and basic
35 local telecommunications services of a small, incumbent local exchange
36 telecommunications company regulated under this section shall not be changed
37 for a period of twelve months after the date the company is subject to regulation
38 under this section. Except as otherwise provided in subsections 8 and 9 of this
39 section and section 392.248, the maximum allowable prices for exchange access
40 and basic local telecommunications services of a large, incumbent local exchange
41 telecommunications company regulated under this section shall not be changed
42 prior to January 1, 2000. Thereafter, the maximum allowable prices for exchange
43 access and basic local telecommunications services of an incumbent local
44 exchange telecommunications company shall be annually changed by [one of] the
45 following methods:

46 (a) By the change in the [telephone service component of the] Consumer
47 Price Index [(CPI-TS)] **(CPI)**, as published by the United States Department of
48 Commerce or its successor agency for the preceding twelve months; provided

49 however, that if such a change in the [CPI-TS] (CPI) for the preceding twelve
50 months is negative, upon request by the company and approval by the commission
51 for good cause shown, the commission may waive any requirement to reduce
52 prices of exchange access and basic local telecommunications service and those
53 existing prices shall remain the maximum allowable prices for purposes of this
54 section until the next annual change. All revenues that are attributable to a
55 [CPI-TS] (CPI) reduction waiver shall be used for the purposes approved by the
56 commission to benefit local exchange ratepayers in a specific exchange or
57 exchanges, including but not limited to expanded local calling scopes; [or]

58 (b) [Upon request by the company and approval by the commission, by the
59 change in the Gross Domestic Product Price Index (GDP-PI), as published by the
60 United States Department of Commerce or its successor agency for the preceding
61 twelve months, minus the productivity offset established for telecommunications
62 service by the Federal Communications Commission and adjusted for exogenous
63 factors.] **Notwithstanding the foregoing, companies that are subject to**
64 **price-cap regulation and that have telecommunications services in one**
65 **or more exchanges classified as competitive may increase the maximum**
66 **allowable rate for basic local telecommunications service in**
67 **noncompetitive exchanges at a level not to exceed the statewide**
68 **average for basic local telecommunications service in the competitively**
69 **classified exchanges of that company.**

70 (2) The commission shall approve a change to a maximum allowable price
71 or make a determination regarding a request for waiver filed pursuant to
72 [paragraph (a) of] subdivision (1) of this subsection within forty-five days of filing
73 of notice by the local exchange telecommunications company. An incumbent local
74 exchange telecommunications company shall file a tariff to reduce the rates
75 charged for any service in any case in which the current rate exceeds the
76 maximum allowable price established under this subsection.

77 (3) [As a part of its request under paragraph (b) of subdivision (1) of this
78 subsection, a company may seek commission approval to use a different
79 productivity offset in lieu of the productivity offset established by the Federal
80 Communications Commission. An adjustment under paragraph (b) of subdivision
81 (1) of this subsection shall not be implemented if the commission determines,
82 after notice and hearing to be conducted within forty-five days of the filing of the
83 notice of a change to a maximum allowable price, that it is not in the public
84 interest. In making such a determination, the commission shall consider the

85 relationship of the proposed price of service to its cost and the impact of
86 competition on the incumbent local exchange telecommunications company's
87 intrastate revenues from regulated telecommunications services. Any
88 adjustments for exogenous factors shall be allocated to the maximum allowable
89 prices for exchange access and basic local telecommunications service in the same
90 percentage as the revenues for such company bears to such company's total
91 revenues from basic local, nonbasic and exchange access services for the
92 preceding twelve months.

93 (4) For the purposes of this section, the term "exogenous factor" shall
94 mean a cumulative impact on a local exchange telecommunications company's
95 intrastate regulated revenue requirement of more than three percent, which is
96 attributable to federal, state or local government laws, regulations or policies
97 which change the revenue, expense or investment of the company, and the term
98 "exogenous factor" shall not include the effect of competition on the revenue,
99 expense or investment of the company nor shall the term include any assessment
100 made under section 392.248.

101 (5)] An incumbent local exchange telecommunications company may
102 change the rates for its services, consistent with the provisions of subsections 2
103 through 5 of section 392.200, but not to exceed the maximum allowable prices, by
104 filing tariffs which shall be approved by the commission within [thirty] **ten** days,
105 provided that any such rate is not in excess of the maximum allowable price
106 established for such service under this section.

107 5. Each telecommunications service offered to business customers, other
108 than exchange access service, of an incumbent local exchange telecommunications
109 company regulated under this section shall be classified as competitive in any
110 exchange in which at least two nonaffiliated entities in addition to the incumbent
111 local exchange company are providing basic local telecommunications service to
112 business **or residential** customers within the exchange. Each
113 telecommunications service offered to residential customers, other than exchange
114 access service, of an incumbent local exchange telecommunications company
115 regulated under this section shall be classified as competitive in an exchange in
116 which at least two nonaffiliated entities in addition to the incumbent local
117 exchange company are providing basic local telecommunications service to
118 residential customers within the exchange. For purposes of this subsection **and**
119 **not for purposes of defining the commission's jurisdiction:**

120 (1) Commercial mobile service providers as identified in 47 U.S.C. Section

121 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing
122 basic local telecommunications service, provided that only one such nonaffiliated
123 provider shall be considered as providing basic local telecommunications service
124 within an exchange. **If the commercial mobile service provider does not**
125 **designate customers by business or residential class, such provider will**
126 **be deemed to be providing service to both business and residential**
127 **customers;**

128 (2) Any entity providing local voice service in whole or in part over
129 telecommunications facilities or other facilities in which it or one of its affiliates
130 have an ownership interest shall be considered as [a] **providing** basic local
131 telecommunications service [provider] regardless of whether such entity is subject
132 to regulation by the commission, **including any interconnected voice over**
133 **Internet protocol service provider registered under section 392.550.** A
134 provider of local voice service that requires the use of a third party, unaffiliated
135 broadband network or dial-up Internet network for the origination of local voice
136 service shall not be considered a basic local telecommunications service
137 provider. For purposes of this subsection only, a "broadband network" is defined
138 as a connection that delivers services at speeds exceeding two hundred kilobits
139 per second in at least one direction;

140 (3) Regardless of the technology utilized, local voice service shall mean
141 two-way voice service capable of receiving calls from a provider of basic local
142 telecommunications services as defined by subdivision (4) of section 386.020,
143 RSMo;

144 (4) Telecommunications companies only offering prepaid
145 telecommunications service or only reselling telecommunications service as
146 defined in subdivision [(46)] **(54)** of section 386.020, RSMo, in the exchange being
147 considered for competitive classification shall not be considered entities providing
148 basic telecommunications service; and

149 (5) "Prepaid telecommunications service" shall mean a local service for
150 which payment is made in advance that excludes access to operator assistance
151 and long distance service;

152 (6) Upon request of an incumbent local exchange telecommunications
153 company seeking competitive classification of [business service or residential
154 service, or both] **its services under this subsection**, the commission shall,
155 within thirty days of the request, determine whether [the requisite number of
156 entities are] **there are at least two entities** providing basic local

157 telecommunications service [to business or residential customers, or both,] in an
158 exchange and if so shall approve tariffs designating all such [business or
159 residential] services other than exchange access service, as competitive within
160 such exchange. Notwithstanding any other provision of this subsection, any
161 incumbent local exchange company may petition the commission for competitive
162 classification within an exchange based on competition from any entity providing
163 local voice service in whole or in part by using its own telecommunications
164 facilities or other facilities or the telecommunications facilities or other facilities
165 of a third party, including those of the incumbent local exchange company as well
166 as providers that rely on an unaffiliated third-party Internet service. The
167 commission shall approve such petition within sixty days [unless it finds that
168 such competitive classification is contrary to the public interest]. The commission
169 shall maintain records of [regulated] **certified and registered** providers of
170 local voice service, including those [regulated] providers who provide local voice
171 service over their own facilities, or through the use of facilities of another
172 provider of local voice service. In reviewing an incumbent local exchange
173 telephone company's request for competitive status in an exchange, the
174 commission shall consider their own records concerning ownership of facilities
175 and shall make all inquiries as are necessary and appropriate from [regulated]
176 **certified and registered** providers of local voice service to determine the extent
177 and presence of [regulated] local voice providers in an exchange. If the services
178 of an incumbent local exchange telecommunications company are classified as
179 competitive under this subsection, the local exchange telecommunications
180 company may thereafter adjust its rates for such competitive services upward or
181 downward as it determines appropriate in its competitive environment, upon
182 filing tariffs which shall become effective within the time lines identified in
183 section 392.500. The commission [shall] **may**, [at least] **not more than once**
184 every two years[, or where an incumbent local exchange telecommunications
185 company increases rates for basic local telecommunications services in an
186 exchange classified as competitive,] review those exchanges where an incumbent
187 local exchange carrier's services have been classified as competitive, to determine
188 if the conditions of this subsection for competitive classification continue to exist
189 in the exchange and if the commission determines, after hearing, that such
190 conditions no longer exist for the incumbent local exchange telecommunications
191 company in such exchange, it shall reimpose upon the incumbent local exchange
192 telecommunications company, in such exchange, the provisions of paragraph (c)

193 of subdivision (2) of subsection 4 of section 392.200 and the **new** maximum
194 allowable prices **for basic local telecommunications service in such**
195 **exchange shall be** established by the provisions of [subsections] **subsection**
196 **4 [and 11] of this section[, and, in any such case, the maximum allowable prices**
197 **established for the telecommunications services of such incumbent local exchange**
198 **telecommunications company shall reflect all index adjustments which were or**
199 **could have been filed from all preceding years since the company's maximum**
200 **allowable prices were first adjusted pursuant to subsection 4 or 11 of this**
201 **section];**

202 **(7) Upon a finding that fifty-five percent or more of an**
203 **incumbent local exchange telecommunications company's total**
204 **subscriber access lines are in exchanges where such company's services**
205 **have been declared competitive, the incumbent local exchange**
206 **telecommunications company shall be deemed competitive and shall no**
207 **longer be subject to price-cap regulation, except that rates charged for**
208 **basic local telecommunications service in exchanges that were**
209 **noncompetitive immediately prior to this finding can be increased to**
210 **a rate that is no higher than the statewide average rate for basic local**
211 **telecommunications service in the incumbent local exchange company's**
212 **competitively classified exchanges for a period of four years. During**
213 **the four year period, any annual increase in rates for residential basic**
214 **local telecommunications service shall not exceed two dollars and fifty**
215 **cents per line per month. Rates charged for exchange access service by**
216 **an incumbent local exchange telecommunications company deemed**
217 **competitive shall not exceed the rates charged at the time the company**
218 **was deemed competitive;**

219 **(8) An incumbent local exchange telecommunications company**
220 **deemed competitive under this section and all alternative local**
221 **exchange telecommunications companies shall not be required to**
222 **comply with customer billing rules, network engineering and**
223 **maintenance rules, and rules requiring the recording and submitting**
224 **of service objectives or surveillance levels established by the**
225 **commission, but shall be subject to commission authority to hear and**
226 **resolve customer complaints to the extent the customer complaint is**
227 **based on Truth-in-Billing regulations established by the Federal**
228 **Communications Commission, or network engineering and maintenance**
229 **standards established within the National Electric Safety Code. In**

230 addition, the commission shall continue to have authority to hear and
231 resolve customer complaints to the extent such complaints are based
232 on a failure to comply with the provisions of applicable tariffs, or a
233 failure to comply with the rules of the commission other than those
234 rules related to customer billing, network engineering and
235 maintenance, and service objectives and surveillance levels or a failure
236 to provide service in a manner that is safe, adequate, usual and
237 customary in the telecommunications industry;

238 (9) The commission may reimpose its customer billing rules,
239 network engineering and maintenance rules, and rules requiring the
240 recording and submitting of service objectives or surveillance levels,
241 as applicable, on an incumbent local exchange telecommunications
242 company that has been deemed competitive under this section, only
243 upon a finding that the incumbent local exchange telecommunications
244 company has engaged in a pattern or practice of inadequate service in
245 these subject areas and that the reimposition of such rules is necessary
246 to ensure the protection of consumer rights and/or the public safety.
247 Prior to formal notice and hearing, the commission shall notify the
248 incumbent local exchange telecommunications company of any
249 deficiencies and provide such company an opportunity to remedy such
250 deficiencies in a reasonable amount of time, but not less than sixty
251 days. Should the incumbent local exchange telecommunications
252 company remedy such deficiencies within a reasonable amount of time,
253 the commission shall not reimpose the applicable customer billing
254 rules, network engineering and maintenance rules, and rules requiring
255 the recording and submitting of service objectives or surveillance
256 levels. Should the incumbent local exchange telecommunications
257 company fail to remedy such deficiencies, the commission shall
258 reimpose the applicable customer billing rules, network engineering
259 and maintenance rules, and rules requiring the recording and
260 submitting of service objectives or surveillance levels, if it finds that:

261 (a) The reimposition of such rules is necessary for the protection
262 of the majority of the incumbent local exchange telecommunications
263 company's customers or for the public safety;

264 (b) No alternative or less burdensome action is adequate to
265 protect the majority of the incumbent local exchange
266 telecommunications company's customers; and

267 (c) Competitive market forces have been and will continue to be
268 insufficient to protect the majority of the incumbent local exchange
269 telecommunications company's customers.

270 (10) Should the commission determine that an emergency exists
271 that impacts public safety or is essential for the protection of a
272 majority of customers of all local exchange telecommunications
273 companies operating in this state, the commission may, on an
274 emergency basis, impose its customer billing rules, network
275 engineering and maintenance rules, and rules requiring the recording
276 and submitting of service objectives or surveillance levels, as
277 applicable, on all local exchange telecommunications companies on a
278 uniform and non-discriminatory basis. The commission may only issue
279 such emergency rules after determining that:

280 (a) The rules are essential for the protection of a majority of
281 customers of local exchange telecommunications companies operating
282 in this state;

283 (b) No alternative or less burdensome mechanism will suffice to
284 protect the majority of customers of local exchange telecommunications
285 companies operating in this state; and

286 (c) Competitive market forces have been and will continue to be
287 insufficient to protect the majority of customers of local exchange
288 telecommunications companies operating in this state.

289 Emergency rules promulgated by the commission under this
290 subdivision shall extend only until the legislature concludes its regular
291 legislative session immediately following the imposition of any of the
292 rules referenced herein, and shall become invalid unless ratified by
293 legislation approved by the general assembly.

294 6. Nothing in this section shall be interpreted to alter the commission's
295 jurisdiction over quality and conditions of [service] **noncompetitive**
296 **telecommunications services** or to relieve **noncompetitive**
297 telecommunications companies from the obligation to comply with commission
298 rules relating to minimum basic local and interexchange telecommunications
299 service.

300 7. A company regulated under this section shall not be subject to
301 regulation under subsection 1 of section 392.240.

302 8. An incumbent local exchange telecommunications company regulated
303 under this section may reduce intrastate access rates, including carrier common

304 line charges, subject to the provisions of subsection 9 of this section, to a level not
305 to exceed one hundred fifty percent of the company's interstate rates for similar
306 access services in effect as of December thirty-first of the year preceding the year
307 in which the company [is] first [subject to regulation under this section]
308 **exercises its option to rebalance rates under this subsection.** [Absent
309 commission action under subsection 10 of this section, an incumbent local
310 exchange telecommunications company regulated under this section shall have
311 four years from the date the company becomes subject to regulation under this
312 section to make the adjustments authorized under this subsection and subsection
313 9 of this section.] Nothing in this subsection shall preclude an incumbent local
314 exchange telecommunications company from establishing its intrastate access
315 rates at a level lower than one hundred fifty percent of the company's interstate
316 rates for similar access services in effect as of December thirty-first of the year
317 preceding the year in which the company [is] first [subject to regulation under
318 this section] **exercises its option to rebalance rates under this subsection.**

319 9. Other provisions of this section to the contrary notwithstanding [and
320 no earlier than January 1, 1997], the commission shall allow an incumbent local
321 exchange telecommunications company regulated under this section which
322 reduces its intrastate access service rates pursuant to subsection 8 of this section
323 to offset the **annual** revenue loss resulting from [the first year's] **its** access
324 service rate reduction by increasing **each year** its monthly maximum allowable
325 prices applicable to basic local exchange telecommunications services by an
326 amount not to exceed one dollar fifty cents. A large incumbent local exchange
327 telecommunications company shall not increase its monthly rates applicable to
328 basic local telecommunications service under this subsection unless it also
329 reduces its rates for intraLATA interexchange telecommunications services by at
330 least ten percent **in the year it first exercises its option to rebalance rates**
331 **under subsection 8 of this section.** [No later than one year after the date the
332 incumbent local exchange telecommunications company becomes subject to
333 regulation under this section, the commission shall complete an investigation of
334 the cost justification for the reduction of intrastate access rates and the increase
335 of maximum allowable prices for basic local telecommunications service. If the
336 commission determines that the company's monthly maximum allowable average
337 statewide prices for basic local telecommunications service after adjustment
338 pursuant to this subsection will be equal to or less than the long-run incremental
339 cost, as defined in section 386.020, RSMo, of providing basic local

340 telecommunications service and that the company's intrastate access rates after
341 adjustment pursuant to this subsection will exceed the long-run incremental cost,
342 as defined in section 386.020, RSMo, of providing intrastate access services, the
343 commission shall allow the company to offset the revenue loss resulting from the
344 remaining three-quarters of the total needed to bring that company's intrastate
345 access rates to one hundred fifty percent of the interstate level by increasing the
346 company's monthly maximum allowable prices applicable to basic local
347 telecommunications service by an amount not to exceed one dollar fifty cents on
348 each of the next three anniversary dates thereafter; otherwise, the commission
349 shall order the reduction of intrastate access rates and the increase of monthly
350 maximum allowable prices for basic local telecommunications services to be
351 terminated at the levels the commission determines to be cost-justified.] The total
352 **annual** revenue increase due to the increase to the monthly maximum allowable
353 prices for basic local telecommunications service shall not exceed the total
354 **annual** revenue loss resulting from the reduction to intrastate access service
355 rates.

356 10. Any telecommunications company whose intrastate access costs are
357 reduced pursuant to subsections 8 and 9 of this section shall decrease its rates
358 for intrastate toll telecommunications service to flow through such reduced costs
359 to its customers. The commission may permit a telecommunications company to
360 defer a rate reduction required by this subdivision until such reductions, on a
361 cumulative basis, reach a level that is practical to flow through to its customers.

362 11. [The maximum allowable prices for nonbasic telecommunications
363 services of a small, incumbent local exchange telecommunications company
364 regulated under this section shall not be changed until twelve months after the
365 date the company is subject to regulation under this section or, on an
366 exchange-by-exchange basis, until an alternative local exchange
367 telecommunications company is certified and providing basic local
368 telecommunications service in such exchange, whichever is earlier. The
369 maximum allowable prices for nonbasic telecommunications services of a large,
370 incumbent local exchange telecommunications company regulated under this
371 section shall not be changed until January 1, 1999, or on an
372 exchange-by-exchange basis, until an alternative local exchange
373 telecommunications company is certified and providing basic local
374 telecommunications service in such exchange, whichever is earlier. Thereafter,
375 the maximum allowable prices for nonbasic telecommunications services of an

376 incumbent local exchange telecommunications company may be annually
377 increased by up to five percent for each of the following twelve-month periods
378 upon providing notice to the commission and filing tariffs establishing the rates
379 for such services in such exchanges at such maximum allowable prices. This
380 subsection shall not preclude an incumbent local exchange telecommunications
381 company from proposing new telecommunications services and establishing prices
382 for such new services. An incumbent local exchange telecommunications company
383 may change the rates for its services, consistent with the provisions of
384 subsections 2 through 5 of section 392.200, but not to exceed the maximum
385 allowable prices, by filing tariffs which shall be approved by the commission
386 within thirty days, provided that any such rate is not in excess of the maximum
387 allowable price established for such service under this section.] **All nonbasic**
388 **telecommunications services of an incumbent local exchange**
389 **telecommunications company that is subject to price-cap regulation**
390 **shall be exempt from limitations on maximum allowable prices.**

391 12. The commission shall permit an incumbent local exchange
392 telecommunications company regulated under this section to determine and set
393 its own depreciation rates which shall be used for all intrastate regulatory
394 purposes. Provided, however, that such a determination is not binding on the
395 commission in determining eligibility for or reimbursement under the universal
396 service fund established under section 392.248.

397 13. Prior to January 1, 2006, the commission shall determine the
398 weighted, statewide average rate of nonwireless basic local telecommunications
399 services as of August 28, 2005. The commission shall likewise determine the
400 weighted, statewide average rate of nonwireless basic local telecommunications
401 services two years and five years after August 28, 2005. The commission shall
402 report its findings to the general assembly by January 30, 2008, and provide a
403 second study by January 30, 2011. If the commission finds that the weighted,
404 statewide average rate of nonwireless basic local telecommunications service in
405 2008 or 2011 is greater than the weighted, statewide average rate of nonwireless
406 basic local telecommunications service in 2006 multiplied by one plus the
407 percentage increase in the Consumer Price Index for all goods and services for the
408 study periods, the commission shall recommend to the general assembly such
409 changes in state law as the commission deems appropriate to achieve the
410 purposes set forth in section 392.185. In determining the weighted, statewide
411 average rate of nonwireless basic local telecommunications service, the

412 commission shall exclude rate increases to nonwireless basic telecommunications
413 service permitted under subsections 8 and 9 of this section and section 392.240
414 or exogenous costs incurred by the providers of nonwireless basic local
415 telecommunications service.

392.361. 1. **As an alternative to the provisions of section 392.245,**
2 a telecommunications company, **including price-cap regulated companies,**
3 may file with the commission a petition to be classified as a competitive
4 telecommunications company or a transitionally competitive telecommunications
5 company under this section, or to have services classified as competitive or
6 transitionally competitive telecommunications services under this section. [The
7 office of public counsel may initiate classification proceedings by petition. The
8 commission may initiate classification proceedings on its own motion. The
9 commission may require all telecommunications companies potentially affected
10 by a classification proceeding to appear as parties for a determination of their
11 interests.]

12 2. The commission [or a petitioner] shall serve by regular mail a copy of
13 any petition or motion filed under subsection 1 of this section on all
14 telecommunications companies that have applied for authority to provide or are
15 authorized to provide intrastate telecommunications service within this state. In
16 response to a petition filed [or a proceeding instituted upon its own motion], the
17 commission shall afford all interested persons reasonable notice and an
18 opportunity to be heard to determine whether a telecommunications company or
19 service may be subject to sufficient competition to justify a lesser degree of
20 regulation. In making this determination, the commission shall, within nine
21 months of the filing of the petition [or initiation of a proceeding] under this
22 section, consider all relevant factors and shall issue written findings of fact
23 delineating all factors considered. [The commission may, for good cause, extend
24 the time for determination for an additional three months. A second extension
25 period not exceeding three months may, for good cause, be granted by the
26 commission.] In any hearing involving the same telecommunications service or
27 company, the commission may, if appropriate and if no new finding of fact is
28 required, rely on a finding of fact made in a prior hearing.

29 3. The commission may classify a telecommunications company as a
30 competitive telecommunications company [only] upon a finding that [all] a
31 **majority of its** telecommunications services offered by such company are
32 competitive telecommunications services.

33 4. If, after following the procedures required under subsection 2 of this
34 section, the commission determines that a telecommunications service is subject
35 to sufficient competition to justify a lesser degree of regulation and that such
36 lesser regulation is consistent with the protection of ratepayers and promotes the
37 public interest it may, by order, classify:

38 (1) The subject telecommunications service offered by a
39 telecommunications company as a competitive telecommunications service;

40 (2) The subject telecommunications service offered by a noncompetitive or
41 transitionally competitive telecommunications company as a transitionally
42 competitive telecommunications service;

43 (3) The subject telecommunications company, subject to the condition set
44 forth in subsection 3 of this section, as a competitive telecommunications
45 company; or

46 (4) The subject interexchange telecommunications company as a
47 transitionally competitive telecommunications company.

48 5. By its order classifying a telecommunications service as competitive or
49 transitionally competitive or a telecommunications company as competitive or
50 transitionally competitive, the commission may, with respect to that service or
51 company and with respect to one or more providers of that service, suspend or
52 modify the application of its rules or the application of any statutory provision
53 contained in sections 392.200 to 392.340, except as provided in section
54 392.390. [The commission may suspend different requirements for different
55 telecommunications companies, if such different treatment is reasonable and not
56 detrimental to the public interest.]

57 6. If the commission suspends the application of a statutory requirement
58 under this section, it may require a telecommunications company to comply with
59 any conditions reasonably made necessary to protect the public interest by the
60 suspension of the statutory requirement. **The exchange access rates of an**
61 **incumbent local exchange company that is declared a competitive**
62 **telecommunications company shall not exceed the rates that were**
63 **charged at the time the company became a competitive**
64 **telecommunications company. The exchange access rates of an**
65 **alternative local exchange company shall not exceed the exchange**
66 **access rates of the incumbent local exchange company against whom**
67 **the alternative local exchange company is competing.**

68 7. [If necessary to protect the public interest, the commission may at any

69 time, by order, after hearing upon its own motion or petition filed by the public
70 counsel, a telecommunications company, or any person or persons authorized to
71 file a complaint as to the reasonableness of any rates or charges under section
72 386.390, RSMo, reimpose or modify the statutory provisions suspended under
73 subsection 5 of this section upon finding that the company or service is no longer
74 competitive or transitionally competitive or that the lesser regulation previously
75 authorized is no longer in the public interest or no longer consistent with the
76 provisions and purposes of this chapter.

77 8.] A telecommunications company may file a petition to have a
78 telecommunications service it then offers classified as competitive or
79 transitionally competitive under this section no more than once every two years,
80 unless exceptional circumstances are demonstrated. A telecommunications
81 company shall consolidate in a single petition all telecommunications services the
82 company then offers which it seeks to classify as competitive or transitionally
83 competitive within two years from the date such petition is filed, unless the
84 commission determines, for good cause shown, that a waiver of this provision
85 should be granted.

86 8. Notwithstanding the foregoing or the provisions of section
87 392.245, intrastate operator and directory services, including directory
88 assistance services, shall be deemed competitive on a statewide basis
89 for all local exchange telecommunications companies.

392.370. [1.] After the effective date of an order of the commission which
2 finds, pursuant to section 392.361, that a telecommunications service is
3 sufficiently competitive to justify a lesser degree of regulation, the same,
4 substitutable, or equivalent service offered by a transitionally competitive or
5 noncompetitive telecommunications company shall be classified as transitionally
6 competitive [pursuant to the procedure set out in subsection 2 of section 392.490],
7 if the telecommunications service granted a lesser degree of regulation is
8 authorized to be provided anywhere within the certificated or service area of the
9 transitionally competitive or noncompetitive telecommunications company. Any
10 transitionally competitive telecommunications service offered by a noncompetitive
11 local exchange telecommunications company shall be classified as a competitive
12 telecommunications service no later than three years after the effective date of
13 a tariff for such service bearing the classification "transitionally
14 competitive". Any transitionally competitive service offered by a transitionally
15 competitive interexchange telecommunications company shall be classified as a

16 competitive telecommunications service no later than two years after the effective
17 date of a tariff for such service bearing the classification "transitionally
18 competitive". **The exchange access rates of an incumbent local exchange**
19 **company that is declared a competitive telecommunications company**
20 **shall not exceed the rates that were charged at the time the company**
21 **became a competitive telecommunications company. The exchange**
22 **access rates of an alternative local exchange company shall not exceed**
23 **the exchange access rates of the incumbent local exchange company**
24 **against whom the alternative local exchange company is competing.**

25 [2. The commission may extend or reinstate a transitionally competitive
26 service classification applicable to any service provided by a noncompetitive local
27 exchange telecommunications company for two periods in addition to the initial
28 three-year period, each additional period not to exceed three years, after notice
29 and hearing, upon the issuance of an order finding that a competitive
30 classification for such service is not in the public interest or not consistent with
31 the purposes and policies of this chapter. The commission may extend or
32 reinstate a transitionally competitive service classification applicable to any
33 service provided by a transitionally competitive interexchange
34 telecommunications company for two periods in addition to the initial two-year
35 period, each additional period not to exceed two years, after notice and hearing,
36 upon the issuance of an order finding that a competitive classification for such
37 service is not in the public interest or not consistent with the purposes and
38 policies of this chapter. The commission, on its own motion, or public counsel or
39 any telecommunications company, by complaint, may initiate a proceeding in
40 which the commission shall consider whether to extend or reinstate a
41 transitionally competitive service classification under this section. In any
42 proceeding initiated under this subsection by the commission or the public
43 counsel, the burden to prove that such service is a competitive
44 telecommunications service shall be on the noncompetitive or transitionally
45 competitive telecommunications company providing such service. The commission
46 may consolidate different proceedings under this section involving different
47 transitionally competitive telecommunications services for purposes of hearing.

48 3. The commission may issue an order, effective at or after such time as
49 the commission may no longer extend or reinstate a transitionally competitive
50 service classification, that reclassifies a competitive or transitionally competitive
51 telecommunications service as a noncompetitive telecommunications service if the

52 commission, after notice and hearing upon its own motion or petition filed by the
53 public counsel, a telecommunications company, or any person or persons
54 authorized to file a complaint as to the reasonableness of any rates or charges
55 under section 386.390, RSMo, determines that a competitive classification for
56 such service is not in the public interest or not consistent with the provisions and
57 purposes of this chapter. Should the commission issue an order under this
58 subsection reclassifying a competitive or transitionally competitive
59 telecommunications service as noncompetitive it shall thereafter apply equal
60 regulation, with respect to such service, to all telecommunications companies
61 providing the same equivalent or substitutable telecommunications service.

62 4. No tariff which proposes a new rate, rental, or charge or new regulation
63 or practice affecting any rate, rental, or charge for a transitionally competitive
64 telecommunications service which is filed by a noncompetitive local exchange
65 telecommunications company, or a noncompetitive or transitionally competitive
66 interexchange telecommunications company, shall be effective unless and until
67 the noncompetitive local exchange telecommunications company, or the
68 noncompetitive or transitionally competitive interexchange telecommunications
69 company, offering or providing, or seeking to offer or provide, such proposed
70 transitionally competitive telecommunications service prepares and files a study
71 of the cost of providing such service. Such study may in the commission's
72 discretion be given proprietary treatment at the request of such company.

73 5. Except as provided in subsection 6 of this section, the provisions of
74 sections 392.220 and 392.230 shall apply to any tariff filed for the offer or
75 provision of a transitionally competitive telecommunications service.

76 6. So long as a transitionally competitive interexchange
77 telecommunications company charges the same price per minute or other unit of
78 measure for the same, equivalent, or substitutable interexchange
79 telecommunications service provided over the same or equivalent distance
80 between any two points, the provisions of subsections 4 and 5 of this section shall
81 not apply to such transitionally competitive interexchange telecommunications
82 company for any proposed decrease in rates for a transitionally competitive
83 interexchange telecommunications service. Such proposed decrease shall instead
84 be treated as a competitive service pursuant to section 392.500.

85 7. A transitionally competitive telecommunications service which becomes
86 a competitive telecommunications service pursuant to this section or section
87 392.361 shall no longer be subject to the provisions of subsections 4, 5, and 6 of

88 this section and any increase or decrease in rates or charges applicable to such
89 competitive service shall be treated pursuant to section 392.500.]

392.420. The commission is authorized, in connection with the issuance
2 or modification of a certificate of interexchange or local exchange service
3 authority or the modification of a certificate of public convenience and necessity
4 for interexchange or local exchange telecommunications service, to entertain a
5 petition [under section 392.361 and in accordance with the procedures set out in
6 section 392.361,] to suspend or modify the application of its rules or the
7 application of any statutory provision contained in sections 392.200 to 392.340 if
8 such waiver or modification is otherwise consistent with the other provisions of
9 sections 392.361 to 392.520 and the purposes of this chapter. **In the case of an**
10 **application for certificate of service authority to provide basic local**
11 **telecommunications service filed by an alternative local exchange**
12 **telecommunications company, and for all existing alternative local**
13 **exchange telecommunications companies, the commission shall waive,**
14 **at a minimum, the application and enforcement of its quality of service**
15 **and billing standards rules, as well as the provisions of subsection 2 of**
16 **section 392.210, subsection 1 of section 392.240, and sections 392.270,**
17 **392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340.**
18 **Notwithstanding any other provision of law in this chapter and chapter**
19 **386, RSMo, where an alternative local exchange telecommunications**
20 **company is authorized to provide local exchange telecommunications**
21 **services in an incumbent local exchange telecommunications company's**
22 **authorized service area, the incumbent local exchange**
23 **telecommunications company may opt into all or some of the**
24 **above-listed statutory and commission rule waivers by filing a notice**
25 **of election with the commission that specifies which waivers are**
26 **elected. In addition, where an interconnected voice over Internet**
27 **protocol service provider is registered to provide service in an**
28 **incumbent local exchange telecommunications company's authorized**
29 **service area under section 392.550, the incumbent local exchange**
30 **telecommunications company may opt into all or some of the**
31 **above-listed statutory and commission rule waivers by filing a notice**
32 **of election with the commission that specifies which waivers are**
33 **elected. The commission may reimpose its quality of service and billing**
34 **standards rules, as applicable, on an incumbent local exchange**
35 **telecommunications company but not on a company granted**

36 competitive status under subdivision (7) of subsection 5 of section
37 392.245 in an exchange where there is no alternative local exchange
38 telecommunications company or interconnected voice over Internet
39 protocol service provider that is certificated or registered to provide
40 local voice service only upon a finding, following formal notice and
41 hearing, that the incumbent local exchange telecommunications
42 company has engaged in a pattern or practice of inadequate
43 service. Prior to formal notice and hearing, the commission shall notify
44 the incumbent local exchange telecommunications company of any
45 deficiencies and provide such company an opportunity to remedy such
46 deficiencies in a reasonable amount of time, but not less than sixty
47 days. Should the incumbent local exchange telecommunications
48 company remedy such deficiencies within a reasonable amount of time,
49 the commission shall not reimpose its quality of service or billing
50 standards on such company.

392.450. 1. The commission shall approve an application for a certificate
2 of local exchange service authority to provide basic local telecommunications
3 service or for the resale of basic local telecommunications service only upon a
4 showing by the applicant, and a finding by the commission, after notice and
5 hearing that the applicant has complied with the certification process established
6 pursuant to section 392.455.

7 2. In addition, the commission shall adopt such rules, consistent with
8 section 253(b) of the federal Telecommunications Act of 1996 to preserve and
9 advance universal service, protect the public safety and welfare, ensure the
10 continued quality of telecommunications services, and safeguard the rights of
11 consumers. Such rules, at a minimum, shall require that all applicants seeking
12 a certificate to provide basic local telecommunications services under this section:

13 (1) File and maintain tariffs with the commission in the same manner and
14 form as the commission requires of the incumbent local exchange
15 telecommunications company with which the applicant seeks to compete; and

16 (2) Meet the minimum service standards[, including quality of service and
17 billing standards,] as the commission requires of the incumbent local exchange
18 telecommunications company with which the applicant seeks to compete.

19 3. An alternative local exchange telecommunications company
20 which possesses a certificate of service authority to provide basic local
21 telecommunications service as of August 28, 2008, in some but not all

22 exchanges of the state may request the commission to modify its
23 existing certificate to include some or all of the remaining exchanges
24 in the state. The commission shall grant such request within thirty
25 days of its filing as long as the alternative local exchange
26 telecommunications company is in good standing, in all respects, with
27 all applicable commission rules and requirements.

28 4. Nothing in this chapter or in chapter 386, RSMo, is intended
29 to alter the rights and obligations arising under federal law, including
30 the interconnection and unbundling provisions of 47 U.S.C. Sections 251
31 and 252, irrespective of the type of technology being used by the
32 requesting local exchange telecommunications company and whether
33 the local exchange telecommunications company is providing
34 telecommunications service or interconnected voice over Internet
35 protocol service, as those terms are defined in chapter 386, RSMo, and
36 the jurisdiction and authority of the commission to mediate and
37 arbitrate disputes arising under said federal law provisions shall
38 remain unaffected.

392.451. [1. Notwithstanding any provisions of this act to the contrary,
2 and consistent with section 253(f) of the federal Telecommunications Act of 1996,
3 the commission shall approve an application for a certificate of local exchange
4 service authority to provide basic local telecommunications service or for the
5 resale of basic local telecommunications service in an area that is served by a
6 small incumbent local exchange telecommunications company only upon a
7 showing by the applicant, and a finding by the commission, after notice and
8 hearing, that:

9 (1) The applicant shall, throughout the service area of the incumbent local
10 exchange telecommunication company, offer all telecommunications services
11 which the commission has determined are essential for purposes of qualifying for
12 state universal service fund support; and

13 (2) The applicant shall advertise the availability of such essential services
14 and the charges therefor using media of general distribution.

15 2. In addition, the commission shall adopt such rules, consistent with
16 section 253(b) of the federal Telecommunications Act of 1996 to preserve and
17 advance universal service, protect the public safety and welfare, ensure the
18 continued quality of telecommunications services, and safeguard the rights of
19 consumers. Such rules, at a minimum, shall require that all applicants seeking

20 a certificate to provide basic local telecommunications services under this section:

21 (1) File and maintain tariffs with the commission in the same manner and
22 form as the commission requires of the incumbent local exchange
23 telecommunications company with which the applicant seeks to compete;

24 (2) Meet the minimum service standards, including quality of service and
25 billing standards, as the commission requires of the incumbent local exchange
26 telecommunications company with which the applicant seeks to compete;

27 (3) Make such reports to and other information filings with the
28 commission as is required of the incumbent local exchange telecommunications
29 company with which the applicant seeks to compete; and

30 (4) Comply with all of the same rules and regulations as the commission
31 may impose on the incumbent local exchange telecommunications company with
32 which the applicant seeks to compete.

33 3.] The state of Missouri hereby adopts and incorporates in total the
34 provisions of section 251(f)(1) of the federal Telecommunications Act of 1996
35 providing exemption for certain rural telephone companies.

392.480. [1.] Except as provided in section 392.520, all
2 telecommunications services offered or provided by telecommunications companies
3 shall be offered under tariff and classified as either competitive, transitionally
4 competitive, or noncompetitive telecommunications services, subject to proper
5 certification and other applicable provisions of this chapter. Any tariff filed with
6 the commission shall indicate whether the telecommunications service to be
7 offered or provided is competitive, transitionally competitive, or noncompetitive.

8 [2. Subject to the provisions of subsection 4 of section 392.220, an offering
9 or the provision of a telecommunications service shall be classified as competitive
10 only if, and only to the extent that, the commission has issued an order to that
11 effect pursuant to section 392.361 or pursuant to its findings issued in an order
12 granting or modifying a certificate of authority or certificate of public convenience
13 and necessity pursuant to section 392.410 or if, and only to the extent that, a
14 transitionally competitive telecommunications service has become a competitive
15 telecommunications service pursuant to section 392.370. Subject to the provisions
16 of subsection 4 of section 392.220, an offering or the provision of a
17 telecommunications service shall be classified as transitionally competitive only
18 if, and only to the extent that, the commission has issued an order to that effect
19 pursuant to section 392.361 or pursuant to its findings issued in an order
20 granting or modifying a certificate of authority or certificate of public convenience

21 and necessity pursuant to section 392.410 or if, and only to the extent that, a
22 telecommunications service has become a transitionally competitive
23 telecommunications service pursuant to subsection 1 of section 392.370 and
24 subsection 2 of section 392.490. All telecommunications services not properly
25 classified as competitive or transitionally competitive shall be classified as
26 noncompetitive telecommunications service.]

392.510. 1. Telecommunications companies may file proposed tariffs for
2 any competitive or transitionally competitive telecommunications service, which
3 includes and specifically describes a range, or band, setting forth a maximum and
4 minimum rate within which range a change in rates or charges for such
5 telecommunications service could be made without prior notice or prior
6 commission approval.

7 2. The commission may approve such a proposed tariff for a transitionally
8 competitive service only if a noncompetitive or transitionally competitive
9 telecommunications company demonstrates, and the commission finds, that any
10 and all rates or charges within the band or range, are consistent with the public
11 interest and the provisions and purposes of this chapter. To the extent any
12 proposed band or range encompasses rates or charges which are not consistent
13 with the public interest and the provisions and purposes of this chapter, the
14 commission shall have the power, upon notice and after hearing, to modify the
15 level, scope or limits of such band or range, as necessary, to ensure that rates or
16 charges resulting therefrom are consistent with the public interest and the
17 provisions and purposes of this chapter.

18 3. The provisions of sections 392.220, 392.230, [subsections 4 and 5 of
19 section 392.370,] and [section] 392.500 shall not apply to any rate increase or
20 decrease within the band or range authorized pursuant to this section. A
21 telecommunications company shall file written notice of the rate change and its
22 effective date with the commission within ten days after the effective date of any
23 increase or decrease authorized pursuant to this section.

24 4. Any tariffs that have been approved by the commission prior to
25 September 28, 1987, which establish a range or band of rates within which range
26 or band of rates a change in rates or charges for such telecommunications service
27 could be made without prior notice or prior commission approval shall be deemed
28 approved by the commission. The provisions of sections 392.220, 392.230,
29 [subsections 4 and 5 of section 392.370,] and [section] 392.500 shall not apply to
30 any rate increase or decrease within such band or range.

392.520. 1. The commission shall have jurisdiction over the provision of private shared tenant services and customer owned coin telephone telecommunications services, but shall subject such services to the minimum regulation permitted by this chapter for competitive telecommunications services. The commission shall exempt the provision of private shared and customer owned coin telephone telecommunications services from the tariff filing requirements of sections 392.220, 392.230, [subsections 4 and 5 of section 392.370,] and [section] 392.500 and may exempt the provision of such telecommunications services from the provisions of subdivisions (1) and (3) of section 392.390 and from the provisions of section 386.370, RSMo.

2. The commission shall establish the rates or charges and terms of connection for access by such services to the local exchange network. In so doing, the commission shall consider the network integrity of the principal provider of local exchange service and the impact of private shared tenant services on the cost to provide, and rates or charges, for local exchange service. If the commission finds, upon notice and investigation, that tenants in private shared tenant services locations have no alternative access to a local exchange telecommunications company providing basic local telecommunications service, it may require the private shared tenant services provider to make alternative facilities available on reasonable terms and conditions at reasonable prices.

392.550. 1. No person, corporation, or other entity shall offer or provide interconnected voice over Internet protocol service as defined in section 386.020, RSMo, without first having obtained a registration from the commission allowing it to do so. Upon application, the commission shall grant a registration to any person, corporation, or other entity to provide interconnected voice over Internet protocol service, subject to the provisions of this section.

2. Interconnected voice over Internet protocol service shall be subject to appropriate exchange access charges to the same extent that telecommunications services are subject to such charges. Until January 1, 2010, this subsection shall not alter intercarrier compensation provisions specifically addressing interconnected voice over Internet protocol service contained in an interconnection agreement approved by the commission pursuant to 47 U.S.C. Section 252 and in existence as of August 28, 2008.

3. The commission shall grant a registration, without a hearing

17 and no later than thirty days following the filing of an application
18 accompanied by an affidavit signed by an officer or general partner of
19 the applicant stating the following:

20 (1) The location of the principal place of business and the names
21 of the principal executive officers of the applicant;

22 (2) Each exchange, in whole or in part, of a local exchange
23 company in which the applicant proposes to provide interconnected
24 voice over Internet protocol service;

25 (3) That the applicant is legally, financially, and technically
26 qualified to provide interconnected voice over Internet protocol
27 services;

28 (4) That the applicant is ready, willing, able, and will comply
29 with all applicable state and federal laws and regulations imposed upon
30 providers of interconnected voice over Internet protocol services;

31 (5) That the applicant will charge and collect from its end-user
32 customers on interconnected voice over Internet protocol service, and
33 remit to the appropriate authority, fees and surcharges in the same
34 manner as are charged and collected upon end user customers of local
35 exchange telecommunications service and remitted by local exchange
36 telecommunications companies, including but not necessarily limited
37 to:

38 (a) Telecommunications programs under section 209.255, RSMo;

39 (b) Missouri universal service fund under section 392.248;

40 (c) Local enhanced 911;

41 (d) Any applicable license tax;

42 (6) That the applicant will remit the annual assessment imposed
43 by the commission under section 386.370, RSMo;

44 (7) That the applicant will file, either directly or indirectly
45 through an affiliated competitive local exchange carrier, with the
46 commission an annual report at a time and covering the yearly period
47 fixed by the commission. Verification shall be made by the official
48 holding office at the time of the filing of such report, and if not made
49 upon the knowledge of the person verifying, the same shall set forth in
50 general terms the sources of his or her information and the grounds for
51 his or her belief as to any matters not stated to be verified on his or her
52 knowledge. Such annual report shall be verified by the oath of the
53 president, treasurer, general manager, or receiver, if any, of any of

54 such companies, or by the person required to file the same. The
55 commission shall prescribe the form of such reports and the character
56 of the information to be contained therein; provided, however, that
57 such form and character of the information to be provided shall be
58 limited to:

59 (a) Information necessary to enable the commission to determine
60 the assessment of the fees and surcharges set forth in subdivisions (5)
61 and (6) of this subsection;

62 (b) A list of all Missouri exchanges, in whole or in part, in which
63 customers are served; and

64 (c) The number of customers or lines served in each
65 exchange. The commission shall maintain such information as
66 proprietary and not available to the public; and

67 (8) That the applicant has established a process for handling
68 inquiries from customers concerning billing issues, service issues, and
69 other consumer-related complaints.

70 4. Notwithstanding any other provision of law to the contrary,
71 the public service commission shall have the following authority with
72 respect to providers of interconnected voice over Internet protocol
73 service and their provision of such service:

74 (1) To assess and collect fees to support telecommunications
75 programs under section 209.255, RSMo;

76 (2) To assess and collect fees to support the Missouri universal
77 service fund under section 392.248;

78 (3) To assess and collect fees to support the operations of the
79 commission under section 386.370, RSMo;

80 (4) To assess and collect fees and surcharges under subdivisions
81 (5) and (6) of subsection 3 of this section;

82 (5) To hear and resolve complaints under sections 386.390 and
83 386.400, RSMo, regarding the payment or nonpayment for exchange
84 access services regardless of whether a user of exchange access service
85 has been certificated or registered by the commission and regardless
86 of whether the commission otherwise has authority over such
87 user. This subdivision shall not grant the commission authority to
88 review rates for exchange access services that are set under section
89 392.245; and

90 (6) To revoke or suspend the registration of any provider of

91 **interconnected voice over Internet protocol service who fails to comply**
92 **with the requirements of this section.**

2 [319.036. Any person owning or leasing agricultural
3 property shall not be required to make notice of excavation
4 required by section 319.022 for excavations on such property, if
5 such excavation is not in the proximity of an underground facility
6 which is marked with an aboveground placard or line marker and
7 is not in the proximity of a utility easement known to that
8 person. For purposes of this section "agricultural property" means
9 any property used to produce an agricultural product as defined by
10 section 348.400, RSMo, or defined as agricultural property by that
section.]

2 [392.490. 1. Except as provided in subsection 2 of this
3 section and in subsection 4 of section 392.220, any
4 telecommunications company which seeks to file a tariff classifying
5 a telecommunications service as competitive or transitionally
6 competitive shall apply to the commission consistent with section
7 392.361, prior to offering or providing such service as competitive
8 or transitionally competitive, for an order finding that the proposed
9 tariff is proper and consistent with the law. The commission or the
10 telecommunications company applying for commission approval
11 pursuant to this subsection shall provide notice of its application
12 and proposed tariff as provided in section 392.361, and the
13 commission shall afford all interested persons reasonable notice
14 and an opportunity to be heard. No such tariff shall become
15 effective until after the commission issues an order consistent with
section 392.361.

16 2. A noncompetitive or transitionally competitive
17 telecommunications company which seeks to file a tariff classifying
18 a telecommunications service as transitionally competitive by
19 operation of subsection 1 of section 392.370, shall apply to the
20 commission for an order finding that the transitionally competitive
21 classification is consistent with subsection 1 of section 392.370. If
22 such tariff does not otherwise propose a new rate, rental or charge
23 or new regulation or practice affecting any rate, rental or charge,
24 the transitionally competitive classification shall become effective

25 ninety days after filing with the commission and notice to public
26 counsel and all telecommunications companies unless the
27 commission issues an order prior to the effective date of such tariff,
28 after notice and hearing, upon its own motion or upon complaint by
29 the public counsel or a telecommunications company, which finds
30 that the transitionally competitive classification is not consistent
31 with subsection 1 of section 392.370.]

[392.515. Notwithstanding the provisions of sections
2 392.361, 392.370, 392.380, 392.400, 392.480, 392.490, 392.500,
3 392.510 and 392.520 to the contrary:

4 (1) Intrastate operator services provided by alternative
5 operator service companies shall be provided pursuant to rates
6 approved by the commission under the provisions of subsection 2
7 of section 392.220, provided that proposed rates shall be presumed
8 reasonable by the commission and approved if they are no higher
9 than operator services rates of certificated interexchange
10 telecommunications companies which are not alternative operator
11 services companies;

12 (2) The commission shall promulgate rules as are supported
13 by evidence as to reasonableness to protect users of intrastate
14 operator services provided by interexchange telecommunications
15 companies at traffic aggregator locations from unjust and
16 unreasonable rates, charges, and practices; and to ensure that such
17 users have the opportunity to make informed choices between and
18 among providers of operator services. All such proposed rules shall
19 be filed with the secretary of state and published in the Missouri
20 Register as provided in chapter 536, RSMo, and a hearing shall be
21 held at which affected parties may present evidence as to the
22 reasonableness of any proposed rule. The provisions of subdivision
23 (6) of section 386.250, RSMo, shall apply to rules promulgated
24 under the authority of this section;

25 (3) Notwithstanding the provisions of paragraph (d) of
26 subdivision (44) of section 386.020, RSMo, to the contrary, no
27 traffic aggregator shall deny a user of intrastate operator services
28 access to that user's interexchange telecommunications company of
29 choice unless the commission, after hearing, orders otherwise for

30 good cause shown.]

 Section B. The repeal and reenactment of sections 319.015, 319.022,
2 319.024, 319.025, 319.026, 319.030, 319.037, 319.041, 319.045, and 319.050, the
3 enactment of sections 319.027, 319.029, and 319.042, and the repeal of section
4 319.036 of this act shall become effective on January 1, 2009.

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