

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1779

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:

1 Section A. Sections 319.015, 319.022, 319.024, 319.025,
2 319.026, 319.030, 319.036, 319.037, 319.041, 319.045, 319.050,
3 386.020, 392.200, 392.220, 392.230, 392.245, 392.361, 392.370,
4 392.420, 392.450, 392.451, 392.480, 392.490, 392.510, 392.515,
5 and 392.520, RSMo, are repealed and twenty-seven new sections
6 enacted in lieu thereof, to be known as sections 319.015,
7 319.022, 319.024, 319.025, 319.026, 319.027, 319.029, 319.030,
8 319.037, 319.041, 319.042, 319.045, 319.050, 386.020, 392.200,
9 392.220, 392.230, 392.245, 392.361, 392.370, 392.420, 392.450,
10 392.451, 392.480, 392.510, 392.520, and 392.550, to read as
11 follows:

12 319.015. For the purposes of sections 319.010 to 319.050,

1 the following terms mean:

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

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

11 (3) "Emergency", either:

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

20 (b) Any interruption in the generation, transmission, or
21 distribution of electricity, or any damage to property or
22 facilities that causes or could cause such an interruption;

23 (4) "Excavation", any operation in which earth, rock or
24 other material in or on the ground is moved, removed or otherwise
25 displaced by means of any tools, equipment or explosives and
26 includes, without limitation, backfilling, grading, trenching,
27 digging, ditching, drilling, well-drilling, augering, boring,
28 tunneling, scraping, cable or pipe plowing, plowing-in,

1 pulling-in, ripping, driving, and demolition of structures,
2 except that, the use of mechanized tools and equipment to break
3 and remove pavement and masonry down only to the depth of such
4 pavement or masonry, the use of [high-velocity] pressurized air
5 to disintegrate and suction to remove earth, rock and other
6 materials, [and] the tilling of soil for agricultural or seeding
7 purposes, and the installation of marking flags and stakes for
8 the location of underground facilities that are not driven shall
9 not be deemed excavation. Backfilling or moving earth on the
10 ground in connection with other excavation operations at the same
11 site shall not be deemed separate instances of excavation;

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

15 ~~[(3)]~~ (6) "Marking", the use of [stakes,] paint, flags,
16 stakes, or other clearly identifiable materials to show the field
17 location of underground facilities, or the area of proposed
18 excavation, in accordance with the color code standard of the
19 American Public Works Association. Unless otherwise provided by
20 the American Public Works Association, the following color scheme
21 shall be used: blue for potable water; purple for reclaimed
22 water, irrigation and slurry lines; green for sewers and drain
23 lines; red for electric, power lines, cables, conduit and
24 lighting cables; orange for communications, including telephone,
25 cable television, alarm or signal lines, cable or conduit; yellow
26 for gas, oil, steam, petroleum or gaseous materials; white for
27 proposed excavation; pink for temporary marking of construction
28 project site features such as centerline and top of slope and toe

1 of slope;

2 [(4)] (7) "Notification center", a statewide organization
3 operating twenty-four hours a day, three hundred sixty-five days
4 a year on a not-for-profit basis, supported by its participants,
5 or by more than one operator of underground facilities, having as
6 its principal purpose the statewide receipt and dissemination to
7 participating owners and operators of underground facilities of
8 information concerning intended excavation activities in the area
9 where such owners and operators have underground facilities, and
10 open to participation by any and all such owners and operators on
11 a fair and uniform basis. Such notification center shall be
12 governed by a board of directors elected by the membership and
13 composed of representatives from each general membership group,
14 provided that one of the board members shall be a representative
15 of the state highways and transportation commission so long as
16 the commission is a participant in the notification center;

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

20 [(5)] (9) "Permitted project", a project for which a permit
21 for the work to be performed is required to be issued by a local,
22 state or federal agency and, as a prerequisite to receiving such
23 permit, the applicant is required to [locate all underground
24 facilities in the area of the work and in the vicinity of the
25 excavation and is required to notify each owner of such
26 underground facilities] notify all underground facility owners in
27 the area of the work for purposes of identifying the location of
28 existing underground facilities;

1 [(6)] (10) "Person", any individual, firm, joint venture,
2 partnership, corporation, association, cooperative, municipality,
3 political subdivision, governmental unit, department or agency
4 and shall include a notification center and any trustee,
5 receiver, assignee or personal representative thereof;

6 [(7)] (11) "Pipeline facility" includes, without
7 limitation, new and existing pipe, rights-of-way, and any
8 equipment, facility, or building used or intended for use in the
9 transportation of gas or the treatment of gas, or used or
10 intended for use in the transportation of hazardous liquids
11 including petroleum, or petroleum products;

12 [(8)] (12) "Preengineered project", a project which is
13 approved by an agency or political subdivision of the state and
14 for which the agency or political subdivision responsible for the
15 project, as part of its engineering and contract procedures,
16 holds a meeting prior to the commencement of any construction
17 work on such project and in such meeting all persons determined
18 by the agency or political subdivision to have underground
19 facilities located within the excavation area of the project are
20 invited to attend and given an opportunity to verify or inform
21 any agency or political subdivision of the location of their
22 underground facilities, if any, within the excavation area and
23 where the location of all known underground facilities are duly
24 located or noted on the engineering drawing as specifications for
25 the project;

26 [(9) "Residential property", any real estate used or
27 intended to be used as a residence by not more than four families
28 on which no underground facilities exist which are owned or

1 operated by any party other than the owner of said property;]

2 (13) "State plane coordinates", a system of locating a
3 point on a flat plane developed by the National Oceanic and
4 Atmospheric Administration and utilized by state agencies, local
5 governments, and other persons to designate the site of a
6 construction project;

7 (14) "Trenchless excavation", horizontal excavation
8 parallel to the surface of the earth which does not use trenching
9 or vertical digging as the primary means of excavation, including
10 but not limited to directional boring, tunneling, or auguring;

11 [(10)] (15) "Underground facility", any item of personal
12 property which shall be buried or placed below ground for use in
13 connection with the storage or conveyance of water, storm
14 drainage, sewage, telecommunications service, cable television
15 service, electricity, oil, gas, hazardous liquids or other
16 substances, and shall include but not be limited to pipes,
17 sewers, conduits, cables, valves, lines, wires, manholes,
18 attachments, or appurtenances, and those portions of pylons or
19 other supports below ground that are within any public or private
20 street, road or alley, right-of-way dedicated to the public use
21 or utility easement of record, or prescriptive easement[; except
22 that where]. If gas distribution lines or electric lines,
23 telecommunications facilities, cable television facilities, water
24 service lines, water system, storm drainage or sewer system lines
25 [are and such lines or facilities], other than those used for
26 vehicular traffic control, lighting of streets and highways and
27 communications for emergency response, are located on private
28 property and are owned solely by the owner or owners of such

1 private property, such lines or facilities receiving service
2 shall not be considered underground facilities for purposes of
3 this chapter[; provided, however], except at locations where they
4 cross or lie within an easement or right-of-way dedicated to
5 public use or owned by a person other than the owner of the
6 private property. Water and sanitary sewer lines providing
7 service to private property that are owned solely by the owner of
8 such property shall not be considered underground facilities at
9 any location. Water, storm drainage, cross road drainage, or
10 sewer lines owned by the state highways and transportation
11 commission shall not be considered underground facilities at any
12 location. For railroads regulated by the Federal Railroad
13 Administration, "underground facility" as used in sections
14 319.015 to 319.050 shall not include any excavating done by a
15 railroad when such excavating is done entirely on land which the
16 railroad owns or on which the railroad operates, or in the event
17 of emergency, on adjacent land;

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

20 ~~[(11)]~~ (17) "Working day", every day, except Saturday,
21 Sunday or a legally declared local, state or federal holiday.

22 319.022. 1. Any person, except a railroad regulated by the
23 Federal Railroad Administration, who installs or otherwise owns
24 or operates an underground facility shall become a participant in
25 a notification center upon first acquiring or owning or operating
26 such underground facility. All owners and operators of
27 underground facilities within the state shall maintain
28 participation in a notification center.

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

15 [2.] 3. All owners and operators of underground facilities
16 which are located in a county of the third classification or
17 fourth classification within the state who are not members of a
18 notification center on August 28, 2001, shall become participants
19 in the notification center prior to January 1, 2005. Any person
20 who installs or otherwise becomes an owner or operator of an
21 underground facility which is located within a county of the
22 third classification or fourth classification on or after January
23 1, 2005, shall become a participant in the notification center
24 within thirty days of acquiring or operating such underground
25 facility. Beginning January 1, 2005, all owners and operators of
26 underground facilities which are located in a county of the third
27 classification or fourth classification within the state shall
28 maintain participation in the notification center.

1 [3.] 4. The notification center shall maintain in its
2 offices and make available to any [person] notification center
3 participant or excavator upon request, a current list of the
4 names and addresses of each [owner and operator participating in
5 the] notification center participant, including the county or
6 counties wherein each [owner or operator] participant has
7 underground facilities. The notification center may charge a
8 reasonable fee to [persons] notification center participants or
9 excavators requesting such list as is necessary to recover the
10 actual costs of printing and mailing.

11 [4.] 5. Excavators shall be informed of the availability of
12 the list of notification center participants [in the notification
13 center] required in subsection [2] 3 of this section in the
14 manner provided for in section 319.024.

15 [5.] 6. An annual audit or review of the notification
16 center shall be performed by a certified public accountant and a
17 report of the findings submitted to the speaker of the house of
18 representatives and the president pro tem of the senate.

19 319.024. 1. Every person owning or operating an
20 underground facility shall assist excavators and the general
21 public in determining the location of underground facilities
22 before excavation activities are begun or as may be required by
23 subsection 6 of section 319.026 or subsection 1 of section
24 319.030 after an excavation has commenced. Methods of informing
25 the public and excavators of the means of obtaining such
26 information may, but need not, include advertising, including
27 advertising in periodicals of general circulation or trade
28 publications, information provided to professional or trade

1 associations which routinely provide information to excavators or
2 design professionals, or sponsoring meetings of excavators and
3 design professionals for such purposes. Information provided by
4 the notification center on behalf of persons owning or operating
5 an underground facility shall be deemed in compliance with this
6 section by such persons. Every person owning or operating
7 underground facilities who has a written policy in determining
8 the location of its underground facilities shall make available a
9 copy of said policy to any [person] notification center
10 participant or excavator upon request.

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

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

27 (2) Either directly or through the notification center,
28 notify excavators and the public in the vicinity of his or her

1 underground pipeline facility of the availability of the
2 notification center by including the information set out in
3 subsection 1 of section 319.025, in notifications required by the
4 safety rules of the Missouri public service commission relating
5 to its damage prevention program;

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

9 319.025. 1. Except as provided in [sections] subsection 3
10 of section 319.030 and in section 319.050, a person shall not
11 make or begin any excavation in any public street, road or alley,
12 right-of-way dedicated to the public use or utility easement of
13 record or within any private street or private property without
14 first giving notice to the notification center and obtaining
15 information concerning the possible location of any underground
16 facilities which may be affected by said excavation from [each
17 and every owner and operator of underground facilities]
18 underground facility owners whose [name appears] names appear on
19 the current list of participants in the notification center and
20 who were communicated to the excavator as notification center
21 participants who would be informed of the excavation notice.

22 Prior to January 1, 2003, a person shall not make or begin any
23 excavation pursuant to this subsection without also making notice
24 to owners or operators of underground facilities which do not
25 participate in a notification center and whose name appears on
26 the current list of the recorder of deeds in and for the county
27 in which the excavation is to occur. Beginning January 1, 2003,
28 notice to the notification center of proposed excavation shall be

1 deemed notice to all owners and operators of underground
2 facilities. The notice referred to in this section shall comply
3 with the provisions of section 319.026. As part of the process
4 to request the locating of underground facilities and having them
5 properly marked, the notification center shall ask excavators to
6 identify whether or not the proposed excavation will be on a
7 public right-of-way or easement dedicated to public use for
8 vehicular traffic.

9 2. An excavator's notice to owners and operators of
10 underground facilities participating in the notification center
11 pursuant to section 319.022 is ineffective for purposes of
12 subsection 1 of this section unless given to such notification
13 center. Prior to January 1, 2003, the notice required by
14 subsection 1 of this section shall be given directly to owners or
15 operators of underground facilities who are not represented by a
16 notification center.

17 3. [If the excavator is engaged in trenching, ditching,
18 drilling, well-drilling or -driving, augering or boring and, if
19 upon notification by the excavator pursuant to section 319.026,
20 the owner or operator notifies the excavator that the area of
21 excavation cannot be determined from the description provided by
22 the excavator, the excavator shall mark the proposed area of
23 excavation prior to marking of location by the owner or operator
24 of the facility. For any excavation, as defined in section
25 319.015,] Notification center participants shall be relieved of
26 the responsibility to respond to a notice of intent to excavate
27 received directly from the person intending to commence an
28 excavation, except for requests for clarification of markings

1 through on-site meetings as provided in subsection 1 of section
2 319.030 and requests for locations at the time of an emergency as
3 provided by section 319.050.

4 4. If the owner or operator notifies the excavator that the
5 area of excavation cannot be determined from the description
6 provided by the excavator through the notice required by this
7 section, [the owner or operator may require] the excavator [to
8 provide] shall provide clarification of the area of excavation by
9 markings or by providing project plans to the owner or operator,
10 or [meet] by meeting on the site of the excavation with
11 representatives of the owner or operator as provided by
12 subsection 1 of section 319.030. [The provisions of this
13 subsection shall not apply to owners of residential property
14 performing excavations on their own property.]

15 5. Notwithstanding the provisions of this section to the
16 contrary, a person shall not make or begin any excavation in any
17 state highway, or on the right-of-way of any state highway,
18 without first obtaining a permit from the state highways and
19 transportation commission pursuant to section 227.240, RSMo.

20 319.026. 1. An excavator shall serve notice of intent to
21 excavate to the notification center by toll-free telephone number
22 operated on a twenty-four hour per day, seven day per week basis
23 or[, prior to January 1, 2003, to individual nonparticipant
24 owners or operators] by facsimile or by completing notice via the
25 Internet at least two working days, but not more than ten working
26 days, before the expected date of commencing the excavation
27 activity. The notification center receiving such notice shall
28 inform the excavator of all [owners, operators and other persons]

1 notification center participants to whom such notice will be
2 transmitted and shall promptly transmit all details of such
3 notice provided under subsection 2 of this section to every
4 [public utility, municipal corporation and all persons owning or
5 operating an underground facility] notification center
6 participant in the area of excavation [and which are participants
7 in and have registered their locations with the notification
8 center. The notification center receiving such notice shall
9 solicit all information required in subsection 2 of this section
10 from the excavator and shall transmit all details of such notice
11 as required by this section].

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

14 (1) The name[, address] and telephone number [and facsimile
15 number, if any,] of the person filing the notice of [intent,]
16 excavation, if the telephone number is different than that of the
17 excavator, and the name, address [and], telephone number of the
18 excavator[,] and whether the excavator's telephone is equipped
19 with a recording device;

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

1 (3) The facsimile number, email address, and cellular
2 telephone number of the excavator, if any;

3 (4) The name of the person primarily responsible for
4 conducting the excavation or managing the excavation process, and
5 if any of the information stated in subdivisions (1) or (3) of
6 this subsection is different for the person primarily responsible
7 for the excavation, the notice shall also state the same
8 information for that person;

9 (5) A detailed description accepted by the notification
10 center sufficient for the location of the excavation by any one
11 or more of the following means: by reference to a specific
12 street address, [or by reference to specific quarter section, and
13 shall state whether excavation is to take place within the city
14 limits. The notice shall also include] or by description of
15 location in relation to the nearest numbered, lettered, or named
16 state or county road or city street for which a road sign is
17 posted, or by latitude and longitude including the appropriate
18 description in degrees, minutes, and seconds, or by state plane
19 coordinates;

20 (6) A description of the site of excavation by approximate
21 distance and direction from the nearest state or county road or
22 city street or intersection of such roads or streets unless
23 previously provided under subdivision (5) of this subsection, and
24 the proximity of the site to any prominent landmarks;

25 (7) A description of the location or locations of the
26 excavation at the site described by direction and approximate
27 distance in relation to prominent features of the site, such as
28 existing buildings or roadways[. For excavations occurring

1 outside the limits of an incorporated city, the following
2 additional information shall be provided: the location of the
3 excavation in relation to the nearest numbered, lettered or named
4 state or county road which is posted on a road sign, including
5 the approximate distance from the nearest intersection or
6 prominent landmark; and, if the excavation is not on or near a
7 posted numbered, lettered or named state or county road,];

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

12 3. The notification center receiving such notice shall
13 solicit all information required [in this] by subsection 2 of
14 this section and shall require the excavator to provide all such
15 information before notice by the excavator is deemed to be
16 completed pursuant to sections 319.015 to 319.050. The
17 notification center shall transmit all details of such notice as
18 required [in subsection 1 of] by this section.

19 [3.] 4. A [written] record of each notice of intent to
20 excavate shall be maintained by the notification center or, prior
21 to January 1, 2003, by the nonmember owner or operator receiving
22 direct notifications for a period of five years. The record
23 shall include the date the notice was received and all
24 information required by subsection 2 of this section which was
25 provided by the excavator and a record of the underground
26 facility owners notified by the notification center. If the
27 [recipient] notification center creates a record of the notice by
28 [computer or] telephonic recording, such record of the original

1 notice shall be maintained for one year from the date of receipt.
2 Records of notices to excavate maintained by the notification
3 center in electronic form shall be deemed to be records under
4 this subsection. Persons holding records of notices of intent to
5 excavate and records of information provided to the excavator by
6 the notification center or owner or operator of the facility,
7 shall make copies of such records available for a reasonable
8 copying fee upon the request of the owner or operator of the
9 underground facilities or the excavator filing the notice.

10 [4.] 5. If in the course of excavation the person
11 responsible for the excavation operations discovers that the
12 owner or operator of the underground facility who is a
13 participant in a notification center has incorrectly located the
14 underground facility, he or she shall notify the notification
15 center which shall inform the [participating owner or operator]
16 notification center participant. If the owner or operator of the
17 underground facility is not a participant in a notification
18 center prior to the January 1, 2003, effective date for mandatory
19 participation pursuant to section 319.022, the person responsible
20 for the excavation shall notify the owner. The person
21 responsible for maintaining records of the location of
22 underground facilities for the [owner or operator] notification
23 center participant shall correct such records to show the actual
24 location of such facilities, if current records are incorrect.

25 [5. Notwithstanding the fact that a project is a
26 preengineered project or a permitted project, excavators
27 connected therewith shall be required to give notification in
28 accordance with this section prior to commencement of

1 excavation.]

2 6. When markings have been provided in response to a notice
3 of intent to excavate, excavators may commence or continue to
4 work within the area described in the notice for so long as the
5 markings are visible. If markings become unusable due to
6 weather, construction or other cause, the excavator shall contact
7 the notification center to request remarking. Such notice shall
8 be given in the same manner as original notice of intent to
9 excavate, and the owner or operator shall remark the site in the
10 same manner, within the same time, as required in response to an
11 original notice of intent to excavate. Each excavator shall
12 exercise reasonable care not to unnecessarily disturb or
13 obliterate markings provided for location of underground
14 facilities. If remarking is required due to the excavator's
15 failure to exercise reasonable care, or if repeated unnecessary
16 requests for remarking are made by an excavator even though the
17 markings are visible and usable, the excavator may be liable to
18 the owner or operator for the reasonable cost of such remarking.

19 319.027. 1. Any person may make design requests by
20 contacting the notification center. Such design requests shall
21 include all information deemed necessary by the notification
22 center to complete the notice, including the identification of
23 the person and a description of the location of the project being
24 designed and other information similar to that required of
25 excavators under section 319.026.

26 2. Design requests shall be made to the notification center
27 at least five working days, but not more than ten working days,
28 before the date the person has requested receiving the

1 information from the underground facility owner. Upon receipt of
2 a design request, the notification center shall inform the person
3 of the name of all notification center participants to whom the
4 notice will be transmitted and shall promptly transmit such
5 notice to the appropriate underground facility owners.

6 3. Every underground facility owner who receives a design
7 request shall mark the location of the facility, or contact the
8 person making the request, within five working days after the
9 date the notice was received from the notification center. If
10 the person making the request was contacted as an alternative to
11 marking location, the person and the underground facility owner
12 shall mutually agree on a schedule and method for providing the
13 information.

14 4. No excavation may be commenced based upon information
15 received through a design request. Obtaining information through
16 a design request shall not excuse any person commencing an
17 excavation from making notice and obtaining information under
18 sections 319.025 and 319.026 concerning the possible location of
19 any underground facilities which may be affected.

20 319.029. Notwithstanding the fact that a project is a
21 preengineered project or a permitted project, or that a design
22 request was previously made, excavators connected therewith shall
23 be required to give notification in accordance with sections
24 319.025 and 319.026 prior to commencement of excavation.

25 319.030. 1. Every person owning or operating an
26 underground facility to whom notice of intent to excavate is
27 required to be given shall, upon receipt of such notice as
28 provided in this section from a person intending to commence an

1 excavation, inform the excavator as promptly as practical, but
2 not in excess of two working days [from receipt of the notice],
3 unless otherwise mutually agreed, of the approximate location of
4 underground facilities in or near the area of the excavation so
5 as to enable the person engaged in the excavation work to locate
6 the facilities in advance of and during the excavation work. The
7 two working days provided for notice in this subsection and
8 subsection 1 of section 319.026, shall begin at 12:00 a.m.
9 following the receipt of the request by the notification center.

10 If the information available to the owner or operator of a
11 pipeline facility or an underground electric or communications
12 cable discloses that valves, vaults or other appurtenances are
13 located in or near the area of excavation, the owner or operator
14 shall either inform the excavator of the approximate location of
15 such appurtenances at the same time and in the same manner as the
16 approximate location of the remainder of the facility is
17 provided, or shall at such time inform the excavator that
18 appurtenances exist in the area and provide a telephone number
19 through which the excavator may contact a representative of the
20 owner or operator who will meet at the site within one working
21 day after request from the excavator and at such meeting furnish
22 the excavator with the available information about the location
23 and nature of such appurtenances. If the excavator states in the
24 notice of intent to excavate that the excavation will involve
25 [tunneling or horizontal boring] trenchless technology, the owner
26 or operator shall inform the excavator of the depth, to the best
27 of his or her knowledge or ability, of the facility according to
28 the records of the owner or operator. The owner or operator

1 shall provide the approximate location of underground facilities
2 by use of markings. If flags or stakes are used, [staking] such
3 marking shall be consistent with the color code and other
4 standards for ground markings. Persons representing the
5 excavator and the owner or operator shall meet on the site of
6 excavation within two working days of a request by either person
7 for such meeting for the purpose of clarifying markings, or upon
8 agreement of the excavator and owner or operator, such meeting
9 may be an alternate means of providing the location of facilities
10 by originally marking the approximate location of the facility at
11 the time of the meeting. If upon receipt of a notice of intent
12 to excavate, an owner or operator determines that he or she
13 neither owns or operates underground facilities in or near the
14 area of excavation, the owner or operator shall within two
15 working days after receipt of the notice, inform the excavator
16 that the owner or operator has no facilities located in the area
17 of the proposed excavation. [If the notice of intent to excavate
18 provided to the owner or operator of the underground facility by
19 the notification center states that a person is available at the
20 telephone number given in the notice between 8:00 a.m. and 5:00
21 p.m. on each working day or that the excavator's telephone is
22 equipped with a recording device, or states a facsimile number
23 for the excavator, the owner or operator shall make actual notice
24 of no facilities in the area of the excavation described in the
25 notice by one or more of the following methods: calling the
26 telephone number given between 8:00 a.m. and 5:00 p.m. on a
27 working day; leaving a message on the excavator's recording
28 device; transmitting a facsimile message to the excavator;

1 marking "no facilities" or "clear" at the site of excavation; or
2 verbally informing the excavator at the site of excavation. If
3 the notice of intent to excavate provided to the owner or
4 operator does not indicate that a person is available at the
5 telephone number given in the notice between 8:00 a.m. and 5:00
6 p.m. on each working day or that the excavator's telephone is
7 equipped with a recording device or that a facsimile number is
8 provided for receiving facsimile messages, then the owner or
9 operator may attempt to notify the excavator of no facilities in
10 the area of excavation by any of the methods indicated above;
11 however, two documented attempts by the owner or operator to
12 reach such an excavator by telephone shall constitute compliance
13 with this subsection.] The owner or operator of the underground
14 facility shall make notice to the excavator that no facilities
15 are located in the area of excavation by contacting the excavator
16 by any of the following methods:

17 (1) By calling the primary number of the excavator or by
18 calling the telephone number of the responsible person as
19 provided by the excavator under subdivision (4) of subsection 2
20 of section 319.026;

21 (2) By leaving a message on the recording device for such
22 numbers;

23 (3) By calling the cellular telephone number of the
24 excavator or responsible person;

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

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

1 or

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

3
4 If the only means of contacting the excavator is one or more
5 telephone numbers provided by the excavator in the notice of
6 excavation under section 319.026, then two attempts by the
7 underground facility owner to contact the excavator at one of the
8 telephone numbers provided shall constitute compliance with this
9 subsection.

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

15 [2. Owners and operators of underground facilities who are
16 participants in the notification center according to the current
17 list maintained in the offices of the notification center shall
18 be relieved of the responsibility to respond to notices of intent
19 to excavate received directly from the person intending to
20 commence an excavation, except for requests for clarification of
21 markings through on-site meetings and requests for locations at
22 the time of an emergency as provided by section 319.050.]

23 3. In the event that a person owning or operating an
24 underground facility fails to comply with the provisions of
25 subsection 1 of this section after notice given by an excavator
26 in compliance with section 319.026, the excavator, prior to
27 commencing the excavation, shall give a second notice to the
28 [same entity to whom the original notice was made] notification

1 center as required by section 319.026 stating that there has been
2 no response to the original notice given under section 319.026.

3 [If,] After the receipt of the [second] notice stating there has
4 been "no response", the owner or operator of an underground
5 facility [fails to provide the excavator with location
6 information during the next working day] shall, within two hours
7 of the receipt of such notice, mark its facilities or contact and
8 inform the excavator of when the facilities will be marked;
9 provided, however, that for "no response" notices made to the
10 notification center by 2:00 p.m., the markings shall be completed
11 on the working day the notice is made to the notification center,
12 and provided that for "no response" notices made to the
13 notification center after 2:00 p.m., the markings shall be
14 completed no later than 10:00 a.m. on the next working day. If
15 an underground facility owner fails to mark its facilities or
16 contact the excavator as required by this subsection, the
17 excavator may commence the excavation. Nothing in this
18 subsection shall excuse the excavator from exercising the degree
19 of care in making the excavation as is otherwise required by law.

20 4. For purposes of this section, a period of two working
21 days begins [upon receipt of the excavator's notice of intent to
22 excavate or upon receipt of a request for a meeting and shall end
23 on the second working day thereafter at the same time of day. If
24 the excavator's notice of intent to excavate or a request for a
25 meeting is received on a working day before 8:00 a.m., such
26 period of time shall begin at 8:00 a.m. of that day. If the
27 excavator's notice of intent to excavate or a request for a
28 meeting is received after 5:00 p.m. on a working day, or at any

1 time on a day that is not a working day, then such period of time
2 shall begin at 8:00 a.m. of the first working day after the day
3 of actual receipt] at 12:00 a.m. following when the request is
4 made.

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

13 2. The excavator shall not use power-driven equipment for
14 [horizontal boring] trenchless excavation, including directional
15 drilling, within the marked approximate location of such
16 underground facilities until the excavator has made careful and
17 prudent efforts to confirm the horizontal and vertical location
18 thereof in the vicinity of the proposed excavation through
19 methods appropriate to the geologic and weather conditions, and
20 the nature of the facility, such as the use of electronic
21 locating devices, hand digging, pot holing when practical, soft
22 digging, vacuum methods, use of pressurized air or water,
23 pneumatic hand tools or other noninvasive methods as such methods
24 are developed. Such methods of confirming location shall not
25 violate established safety practices. Nothing in this subsection
26 shall authorize any person other than the owner or operator of a
27 facility to attach an electronic locating device to any
28 underground facility. For excavations paralleling the

1 underground facility, such efforts to confirm the location of the
2 facility shall be made at careful and prudent intervals. The
3 excavator shall also make careful and prudent efforts by such
4 means as are appropriate to the geologic and weather conditions
5 and the nature of the facility, to confirm the horizontal and
6 vertical location of the boring device during boring operations.
7 Notwithstanding the foregoing, the excavator shall not be
8 required to confirm the horizontal or vertical location of the
9 underground facilities if the excavator, using the methods
10 described in this section, excavates a hole over the underground
11 facilities to a depth two feet or more below the planned boring
12 path and then carefully and prudently monitors the horizontal and
13 vertical location of the boring device in a manner calculated to
14 enable the device to be visually observed by the excavator as it
15 crosses the entire width of the marked approximate location of
16 the underground facilities.

17 319.041. Nothing in the foregoing shall relieve an
18 excavator from the obligation to excavate in a safe and prudent
19 manner, nor shall it absolve an excavator from liability for
20 damage to legally installed facilities. [Notwithstanding any
21 provision of law to the contrary, nothing in this chapter shall
22 abrogate any contractual provisions entered into between any
23 railroad and any other party owning or operating an underground
24 facility within the railroad's right-of-way.]

25 319.042. Notwithstanding any provision of law to the
26 contrary, nothing in this chapter shall abrogate any contractual
27 provisions entered into between any railroad and any other party
28 owning or operating an underground facility within the railroad's

1 right-of-way. For railroads regulated by the Federal Railroad
2 Administration, sections 319.015 to 319.050 shall not include any
3 underground facility owned or operated by a railroad on land
4 which the railroad owns or any excavation done by a railroad when
5 such excavation is done entirely on land which the railroad owns.

6 319.045. 1. In the event of any damage or dislocation or
7 disturbance of any underground facility in connection with any
8 excavation, the person responsible for the excavation operations
9 shall immediately notify the notification center [and the owner
10 or operator of the facility or the owner or operator, if known,
11 if it is not a participant in the notification center prior to
12 January 1, 2003. On or after January 1, 2003, the responsible
13 party shall notify the notification center only]. This
14 subsection shall be deemed to require reporting of any damage,
15 dislocation, or disturbance to trace wires, encasements, cathode
16 protection, permanent above-ground stakes or other such items
17 utilized for protection of the underground facility.

18 2. In the event of any damage or dislocation or disturbance
19 to any underground facility or any protective devices required to
20 be reported by the excavator under subsection 1 of this section,
21 in advance of or during the excavation work, the person
22 responsible for the excavation operations shall not conceal or
23 attempt to conceal such damage or dislocation or disturbance, nor
24 shall that person attempt or make repairs to the facility unless
25 authorized by the owner or operator of the facility. In the case
26 of sewer lines or facilities, emergency temporary repairs may be
27 made by the excavator after notification without the owners' or
28 operators' authorization to prevent further damage to the

1 facilities. Such emergency repairs shall not relieve the
2 excavator of responsibility to make notification as required by
3 subsection 1 of this section.

4 3. Any person who violates in any material respect the
5 provisions of section 319.022, [319.023,] 319.025, 319.026,
6 319.029, 319.030, 319.037, or 319.045 or who willfully damages an
7 underground facility shall be liable to the state of Missouri for
8 a civil penalty of up to ten thousand dollars for each violation
9 for each day such violation persists, except that the maximum
10 penalty for violation of the provisions of sections 319.010 to
11 319.050 shall not exceed five hundred thousand dollars for any
12 related series of violations. An action to recover such civil
13 penalty may be brought by the attorney general or a prosecuting
14 attorney on behalf of the state of Missouri in any appropriate
15 circuit court of this state. Trial thereof shall be before the
16 court, which shall consider the nature, circumstances and gravity
17 of the violation, and with respect to the person found to have
18 committed the violation, the degree of culpability, the absence
19 or existence of prior violations, whether the violation was a
20 willful act, the effect on ability to continue to do business,
21 any good faith in attempting to achieve compliance, ability to
22 pay the penalty, and such other matters as justice may require in
23 determining the amount of penalty imposed.

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

1 injunctive relief, temporary or permanent.

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

1 emergency. The excavator may be liable to the owner or operator
2 for costs directly associated with the locating of any such
3 underground facility relating to a notification of an emergency
4 that does not meet the definition of "emergency" as stated in
5 section 319.015.

6 386.020. As used in this chapter, the following words and
7 phrases mean:

8 (1) "Alternative local exchange telecommunications
9 company", a local exchange telecommunications company certified
10 by the commission to provide basic or nonbasic local
11 telecommunications service or switched exchange access service,
12 or any combination of such services, in a specific geographic
13 area subsequent to December 31, 1995;

14 (2) "Alternative operator services company", any
15 certificated interexchange telecommunications company which
16 receives more than forty percent of its annual Missouri
17 intrastate telecommunications service revenues from the provision
18 of operator services pursuant to operator services contracts with
19 traffic aggregators;

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

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

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

3 (b) Assistance programs for installation of, or access to,
4 basic local telecommunications services for qualifying
5 economically disadvantaged or disabled customers or both,
6 including, but not limited to, lifeline services and link-up
7 Missouri services for low-income customers or dual-party relay
8 service for the hearing impaired and speech impaired;

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

11 (d) Access to basic local operator services;

12 (e) Access to basic local directory assistance;

13 (f) Standard intercept service;

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

16 (h) One standard white pages directory listing.

17
18 Basic local telecommunications service does not include optional
19 toll-free calling outside a local calling scope but within a
20 community of interest, available for an additional monthly fee or
21 the offering or provision of basic local telecommunications
22 service at private shared-tenant service locations;

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

27 (6) "Carrier of last resort", any telecommunications
28 company which is obligated to offer basic local

1 telecommunications service to all customers who request service
2 in a geographic area defined by the commission and cannot abandon
3 this obligation without approval from the commission;

4 (7) "Commission", the "Public Service Commission" hereby
5 created;

6 (8) "Commissioner", one of the members of the commission;

7 (9) "Competitive telecommunications company", a
8 telecommunications company which has been classified as such by
9 the commission pursuant to section 392.361 or 392.245, RSMo;

10 (10) "Competitive telecommunications service", a
11 telecommunications service which has been classified as such by
12 the commission pursuant to section 392.245, RSMo, or to section
13 392.361, RSMo, or which has become a competitive
14 telecommunications service pursuant to section 392.370, RSMo;

15 (11) "Corporation" includes a corporation, company,
16 association and joint stock association or company;

17 (12) "Customer-owned pay telephone", a privately owned
18 telecommunications device that is not owned, leased or otherwise
19 controlled by a local exchange telecommunications company and
20 which provides telecommunications services for a use fee to the
21 general public;

22 (13) "Effective competition" shall be determined by the
23 commission based on:

24 (a) The extent to which services are available from
25 alternative providers in the relevant market;

26 (b) The extent to which the services of alternative
27 providers are functionally equivalent or substitutable at
28 comparable rates, terms and conditions;

1 (c) The extent to which the purposes and policies of
2 chapter 392, RSMo, including the reasonableness of rates, as set
3 out in section 392.185, RSMo, are being advanced;

4 (d) Existing economic or regulatory barriers to entry; and

5 (e) Any other factors deemed relevant by the commission and
6 necessary to implement the purposes and policies of chapter 392,
7 RSMo;

8 (14) "Electric plant" includes all real estate, fixtures
9 and personal property operated, controlled, owned, used or to be
10 used for or in connection with or to facilitate the generation,
11 transmission, distribution, sale or furnishing of electricity for
12 light, heat or power; and any conduits, ducts or other devices,
13 materials, apparatus or property for containing, holding or
14 carrying conductors used or to be used for the transmission of
15 electricity for light, heat or power;

16 (15) "Electrical corporation" includes every corporation,
17 company, association, joint stock company or association,
18 partnership and person, their lessees, trustees or receivers
19 appointed by any court whatsoever, other than a railroad, light
20 rail or street railroad corporation generating electricity solely
21 for railroad, light rail or street railroad purposes or for the
22 use of its tenants and not for sale to others, owning, operating,
23 controlling or managing any electric plant except where
24 electricity is generated or distributed by the producer solely on
25 or through private property for railroad, light rail or street
26 railroad purposes or for its own use or the use of its tenants
27 and not for sale to others;

28 (16) "Exchange", a geographical area for the administration

1 of telecommunications services, established and described by the
2 tariff of a telecommunications company providing basic local
3 telecommunications service;

4 (17) "Exchange access service", a service provided by a
5 local exchange telecommunications company which enables a
6 telecommunications company or other customer to enter and exit
7 the local exchange telecommunications network in order to
8 originate or terminate interexchange telecommunications service;

9 (18) "Gas corporation" includes every corporation, company,
10 association, joint stock company or association, partnership and
11 person, their lessees, trustees or receivers appointed by any
12 court whatsoever, owning, operating, controlling or managing any
13 gas plant operating for public use under privilege, license or
14 franchise now or hereafter granted by the state or any political
15 subdivision, county or municipality thereof;

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

21 (20) "Heating company" includes every corporation, company,
22 association, joint stock company or association, partnership and
23 person, their lessees, trustees or receivers, appointed by any
24 court whatsoever, owning, operating, managing or controlling any
25 plant or property for manufacturing and distributing and selling,
26 for distribution, or distributing hot or cold water, steam or
27 currents of hot or cold air for motive power, heating, cooking,
28 or for any public use or service, in any city, town or village in

1 this state; provided, that no agency or authority created by or
2 operated pursuant to an interstate compact established pursuant
3 to section 70.370, RSMo, shall be a heating company or subject to
4 regulation by the commission;

5 (21) "High-cost area", a geographic area, which shall
6 follow exchange boundaries and be no smaller than an exchange nor
7 larger than a local calling scope, where the cost of providing
8 basic local telecommunications service as determined by the
9 commission, giving due regard to recovery of an appropriate share
10 of joint and common costs as well as those costs related to
11 carrier of last resort obligations, exceeds the rate for basic
12 local telecommunications service found reasonable by the
13 commission;

14 (22) "Incumbent local exchange telecommunications company",
15 a local exchange telecommunications company authorized to provide
16 basic local telecommunications service in a specific geographic
17 area as of December 31, 1995, or a successor in interest to such
18 a company;

19 (23) "Interconnected voice over Internet protocol service",
20 service that:

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

22 (b) Requires a broadband connection from the user's
23 location;

24 (c) Requires Internet protocol-compatible customer premises
25 equipment; and

26 (d) Permits users generally to receive calls that originate
27 on the public switched telephone network and to terminate calls
28 to the public switched telephone network;

1 (24) "Interexchange telecommunications company", any
2 company engaged in the provision of interexchange
3 telecommunications service;

4 [(24)] (25) "Interexchange telecommunications service",
5 telecommunications service between points in two or more
6 exchanges;

7 [(25)] (26) "InterLATA", interexchange telecommunications
8 service between points in different local access and
9 transportation areas;

10 [(26)] (27) "IntraLATA", interexchange telecommunications
11 service between points within the same local access and
12 transportation area;

13 [(27)] (28) "Light rail" includes every rail transportation
14 system in which one or more rail vehicles are propelled
15 electrically by overhead catenary wire upon tracks located
16 substantially within an urban area and are operated exclusively
17 in the transportation of passengers and their baggage, and
18 including all bridges, tunnels, equipment, switches, spurs,
19 tracks, stations, used in connection with the operation of light
20 rail;

21 [(28)] (29) "Line" includes route;

22 [(29)] (30) "Local access and transportation area" or
23 "LATA", contiguous geographic area approved by the U.S. District
24 Court for the District of Columbia in United States v. Western
25 Electric, Civil Action No. 82-0192 that defines the permissible
26 areas of operations for the Bell Operating companies;

27 [(30)] (31) "Local exchange telecommunications company",
28 any company engaged in the provision of local exchange

1 telecommunications service. A local exchange telecommunications
2 company shall be considered a "large local exchange
3 telecommunications company" if it has at least one hundred
4 thousand access lines in Missouri and a "small local exchange
5 telecommunications company" if it has less than one hundred
6 thousand access lines in Missouri;

7 [(31)] (32) "Local exchange telecommunications service",
8 telecommunications service between points within an exchange;

9 [(32)] (33) "Long-run incremental cost", the change in
10 total costs of the company of producing an increment of output in
11 the long run when the company uses least cost technology, and
12 excluding any costs that, in the long run, are not brought into
13 existence as a direct result of the increment of output. The
14 relevant increment of output shall be the level of output
15 necessary to satisfy total current demand levels for the service
16 in question, or, for new services, demand levels that can be
17 demonstrably anticipated;

18 [(33)] (34) "Municipality" includes a city, village or
19 town;

20 [(34)] (35) "Nonbasic telecommunications services" shall be
21 all regulated telecommunications services other than basic local
22 and exchange access telecommunications services, and shall
23 include the services identified in paragraphs (d) and (e) of
24 subdivision (4) of this section. Any retail telecommunications
25 service offered for the first time after August 28, 1996, shall
26 be classified as a nonbasic telecommunications service, including
27 any new service which does not replace an existing service;

28 [(35)] (36) "Noncompetitive telecommunications company", a

1 telecommunications company other than a competitive
2 telecommunications company or a transitionally competitive
3 telecommunications company;

4 [(36)] (37) "Noncompetitive telecommunications service", a
5 telecommunications service other than a competitive or
6 transitionally competitive telecommunications service;

7 [(37)] (38) "Operator services", operator-assisted
8 interexchange telecommunications service by means of either human
9 or automated call intervention and includes, but is not limited
10 to, billing or completion of calling card, collect,
11 person-to-person, station-to-station or third number billed
12 calls;

13 [(38)] (39) "Operator services contract", any agreement
14 between a traffic aggregator and a certificated interexchange
15 telecommunications company to provide operator services at a
16 traffic aggregator location;

17 [(39)] (40) "Person" includes an individual, and a firm or
18 copartnership;

19 [(40)] (41) "Private shared tenant services" includes the
20 provision of telecommunications and information management
21 services and equipment within a user group located in discrete
22 private premises as authorized by the commission by a
23 commercial-shared services provider or by a user association,
24 through privately owned customer premises equipment and
25 associated data processing and information management services
26 and includes the provision of connections to the facilities of
27 local exchange telecommunications companies and to interexchange
28 telecommunications companies;

1 [(41)] (42) "Private telecommunications system", a
2 telecommunications system controlled by a person or corporation
3 for the sole and exclusive use of such person, corporation or
4 legal or corporate affiliate thereof;

5 [(42)] (43) "Public utility" includes every pipeline
6 corporation, gas corporation, electrical corporation,
7 telecommunications company, water corporation, heat or
8 refrigerating corporation, and sewer corporation, as these terms
9 are defined in this section, and each thereof is hereby declared
10 to be a public utility and to be subject to the jurisdiction,
11 control and regulation of the commission and to the provisions of
12 this chapter;

13 [(43)] (44) "Railroad" includes every railroad and railway,
14 other than street railroad or light rail, by whatsoever power
15 operated for public use in the conveyance of persons or property
16 for compensation, with all bridges, ferries, tunnels, equipment,
17 switches, spurs, tracks, stations, real estate and terminal
18 facilities of every kind used, operated, controlled or owned by
19 or in connection with any such railroad;

20 [(44)] (45) "Railroad corporation" includes every
21 corporation, company, association, joint stock company or
22 association, partnership and person, their lessees, trustees or
23 receivers appointed by any court whatsoever, owning, holding,
24 operating, controlling or managing any railroad or railway as
25 defined in this section, or any cars or other equipment used
26 thereon or in connection therewith;

27 [(45)] (46) "Rate", every individual or joint rate, fare,
28 toll, charge, reconsigning charge, switching charge, rental or

1 other compensation of any corporation, person or public utility,
2 or any two or more such individual or joint rates, fares, tolls,
3 charges, reconsigning charges, switching charges, rentals or
4 other compensations of any corporation, person or public utility
5 or any schedule or tariff thereof;

6 [(46)] (47) "Resale of telecommunications service", the
7 offering or providing of telecommunications service primarily
8 through the use of services or facilities owned or provided by a
9 separate telecommunications company, but does not include the
10 offering or providing of private shared tenant services;

11 [(47)] (48) "Service" includes not only the use and
12 accommodations afforded consumers or patrons, but also any
13 product or commodity furnished by any corporation, person or
14 public utility and the plant, equipment, apparatus, appliances,
15 property and facilities employed by any corporation, person or
16 public utility in performing any service or in furnishing any
17 product or commodity and devoted to the public purposes of such
18 corporation, person or public utility, and to the use and
19 accommodation of consumers or patrons;

20 [(48)] (49) "Sewer corporation" includes every corporation,
21 company, association, joint stock company or association,
22 partnership or person, their lessees, trustees or receivers
23 appointed by any court, owning, operating, controlling or
24 managing any sewer system, plant or property, for the collection,
25 carriage, treatment, or disposal of sewage anywhere within the
26 state for gain, except that the term shall not include sewer
27 systems with fewer than twenty-five outlets;

28 [(49)] (50) "Sewer system" includes all pipes, pumps,

1 canals, lagoons, plants, structures and appliances, and all other
2 real estate, fixtures and personal property, owned, operated,
3 controlled or managed in connection with or to facilitate the
4 collection, carriage, treatment and disposal of sewage for
5 municipal, domestic or other beneficial or necessary purpose;

6 [(50)] (51) "Street railroad" includes every railroad by
7 whatsoever type of power operated, and all extensions and
8 branches thereof and supplementary facilities thereto by
9 whatsoever type of vehicle operated, for public use in the
10 conveyance of persons or property for compensation, mainly
11 providing local transportation service upon the streets, highways
12 and public places in a municipality, or in and adjacent to a
13 municipality, and including all cars, buses and other rolling
14 stock, equipment, switches, spurs, tracks, poles, wires,
15 conduits, cables, subways, tunnels, stations, terminals and real
16 estate of every kind used, operated or owned in connection
17 therewith but this term shall not include light rail as defined
18 in this section; and the term "street railroad" when used in this
19 chapter shall also include all motor bus and trolley bus lines
20 and routes and similar local transportation facilities, and the
21 rolling stock and other equipment thereof and the appurtenances
22 thereto, when operated as a part of a street railroad or trolley
23 bus local transportation system, or in conjunction therewith or
24 supplementary thereto, but such term shall not include a railroad
25 constituting or used as part of a trunk line railroad system and
26 any street railroad as defined above which shall be converted
27 wholly to motor bus operation shall nevertheless continue to be
28 included within the term "street railroad" as used herein;

1 [(51)] (52) "Telecommunications company" includes telephone
2 corporations as that term is used in the statutes of this state
3 and every corporation, company, association, joint stock company
4 or association, partnership and person, their lessees, trustees
5 or receivers appointed by any court whatsoever, owning,
6 operating, controlling or managing any facilities used to provide
7 telecommunications service for hire, sale or resale within this
8 state;

9 [(52)] (53) "Telecommunications facilities" includes lines,
10 conduits, ducts, poles, wires, cables, crossarms, receivers,
11 transmitters, instruments, machines, appliances and all devices,
12 real estate, easements, apparatus, property and routes used,
13 operated, controlled or owned by any telecommunications company
14 to facilitate the provision of telecommunications service;

15 [(53)] (54) "Telecommunications service", the transmission
16 of information by wire, radio, optical cable, electronic
17 impulses, or other similar means. As used in this definition,
18 "information" means knowledge or intelligence represented by any
19 form of writing, signs, signals, pictures, sounds, or any other
20 symbols. Telecommunications service does not include:

21 (a) The rent, sale, lease, or exchange for other value
22 received of customer premises equipment except for customer
23 premises equipment owned by a telephone company certificated or
24 otherwise authorized to provide telephone service prior to
25 September 28, 1987, and provided under tariff or in inventory on
26 January 1, 1983, which must be detariffed no later than December
27 31, 1987, and thereafter the provision of which shall not be a
28 telecommunications service, and except for customer premises

1 equipment owned or provided by a telecommunications company and
2 used for answering 911 or emergency calls;

3 (b) Answering services and paging services;

4 (c) The offering of radio communication services and
5 facilities when such services and facilities are provided under a
6 license granted by the Federal Communications Commission under
7 the commercial mobile radio services rules and regulations;

8 (d) Services provided by a hospital, hotel, motel, or other
9 similar business whose principal service is the provision of
10 temporary lodging through the owning or operating of message
11 switching or billing equipment solely for the purpose of
12 providing at a charge telecommunications services to its
13 temporary patients or guests;

14 (e) Services provided by a private telecommunications
15 system;

16 (f) Cable television service;

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

19 (h) Electronic publishing services; [or]

20 (i) Services provided pursuant to a broadcast radio or
21 television license issued by the Federal Communications
22 Commission; or

23 (j) Interconnected voice over Internet protocol service;

24 [(54)] (55) "Telephone cooperative", every corporation
25 defined as a telecommunications company in this section, in which
26 at least ninety percent of those persons and corporations
27 subscribing to receive local telecommunications service from the
28 corporation own at least ninety percent of the corporation's

1 outstanding and issued capital stock and in which no subscriber
2 owns more than two shares of the corporation's outstanding and
3 issued capital stock;

4 [(55)] (56) "Traffic aggregator", any person, firm,
5 partnership or corporation which furnishes a telephone for use by
6 the public and includes, but is not limited to, telephones
7 located in rooms, offices and similar locations in hotels,
8 motels, hospitals, colleges, universities, airports and public or
9 customer-owned pay telephone locations, whether or not coin
10 operated;

11 [(56)] (57) "Transitionally competitive telecommunications
12 company", an interexchange telecommunications company which
13 provides any noncompetitive or transitionally competitive
14 telecommunications service, except for an interexchange
15 telecommunications company which provides only noncompetitive
16 telecommunications service;

17 [(57)] (58) "Transitionally competitive telecommunications
18 service", a telecommunications service offered by a
19 noncompetitive or transitionally competitive telecommunications
20 company and classified as transitionally competitive by the
21 commission pursuant to section 392.361 or 392.370, RSMo;

22 [(58)] (59) "Water corporation" includes every corporation,
23 company, association, joint stock company or association,
24 partnership and person, their lessees, trustees, or receivers
25 appointed by any court whatsoever, owning, operating, controlling
26 or managing any plant or property, dam or water supply, canal, or
27 power station, distributing or selling for distribution, or
28 selling or supplying for gain any water;

1 [(59)] (60) "Water system" includes all reservoirs,
2 tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals,
3 structures and appliances, and all other real estate, fixtures
4 and personal property, owned, operated, controlled or managed in
5 connection with or to facilitate the diversion, development,
6 storage, supply, distribution, sale, furnishing or carriage of
7 water for municipal, domestic or other beneficial use.

8 392.200. 1. Every telecommunications company shall furnish
9 and provide with respect to its business such instrumentalities
10 and facilities as shall be adequate and in all respects just and
11 reasonable. All charges made and demanded by any
12 telecommunications company for any service rendered or to be
13 rendered in connection therewith shall be just and reasonable and
14 not more than allowed by law or by order or decision of the
15 commission. Every unjust or unreasonable charge made or demanded
16 for any such service or in connection therewith or in excess of
17 that allowed by law or by order or decision of the commission is
18 prohibited and declared to be unlawful.

19 2. No telecommunications company shall directly or
20 indirectly or by any special rate, rebate, drawback or other
21 device or method charge, demand, collect or receive from any
22 person or corporation a greater or less compensation for any
23 service rendered or to be rendered with respect to
24 telecommunications or in connection therewith, except as
25 authorized in this chapter, than it charges, demands, collects or
26 receives from any other person or corporation for doing a like
27 and contemporaneous service with respect to telecommunications
28 under the same or substantially the same circumstances and

1 conditions. Promotional programs for telecommunications services
2 may be offered by telecommunications companies for periods of
3 time so long as the offer is otherwise consistent with the
4 provisions of this chapter and approved by the commission.
5 Neither this subsection nor subsection 3 of this section shall be
6 construed to prohibit an economy rate telephone service offering.
7 This section and section 392.220 to the contrary notwithstanding,
8 the commission is authorized to approve tariffs filed by local
9 exchange telecommunications companies which elect to provide
10 reduced charges for residential telecommunications connection
11 services pursuant to the lifeline connection assistance plan as
12 promulgated by the federal communications commission. Eligible
13 subscribers for such connection services shall be those as
14 defined by participating local exchange telecommunications
15 company tariffs.

16 3. No telecommunications company shall make or give any
17 undue or unreasonable preference or advantage to any person,
18 corporation or locality, or subject any particular person,
19 corporation or locality to any undue or unreasonable prejudice or
20 disadvantage in any respect whatsoever except that
21 telecommunications messages may be classified into such classes
22 as are just and reasonable, and different rates may be charged
23 for the different classes of messages.

24 4. (1) No telecommunications company may define a
25 telecommunications service as a different telecommunications
26 service based on the geographic area or other market segmentation
27 within which such telecommunications service is offered or
28 provided, unless the telecommunications company makes application

1 and files a tariff or tariffs which propose relief from this
2 subsection. Any such tariff shall be subject to the provisions
3 of sections 392.220 and 392.230 and in any hearing thereon the
4 burden shall be on the telecommunications company to show, by
5 clear and convincing evidence, that the definition of such
6 service based on the geographic area or other market within which
7 such service is offered is reasonably necessary to promote the
8 public interest and the purposes and policies of this chapter.

9 (2) It is the intent of this act to bring the benefits of
10 competition to all customers and to ensure that incumbent and
11 alternative local exchange telecommunications companies have the
12 opportunity to price and market telecommunications services to
13 all prospective customers in any geographic area in which they
14 compete. To promote the goals of the federal Telecommunications
15 Act of 1996, for an alternative local exchange telecommunications
16 company or for an incumbent local exchange telecommunications
17 company in any exchange where an incumbent local exchange
18 telecommunications company has been classified competitive under
19 sections 392.245 and 392.361, an alternative local exchange
20 telecommunications company has been certified and is providing
21 basic local telecommunications services or switched exchange
22 access services, or [for an alternative local exchange
23 telecommunications company] an interconnected voice over Internet
24 protocol service provider has been registered and is providing
25 local voice service, the commission shall review and approve or
26 reject, within forty-five days of filing, tariffs for proposed
27 different services as follows:

28 (a) For services proposed on an exchange-wide basis, it

1 shall be presumed that a tariff which defines and establishes
2 prices for a local exchange telecommunications service or
3 exchange access service as a different telecommunications service
4 in the geographic area, no smaller than an exchange, within which
5 such local exchange telecommunications service or exchange access
6 service is offered is reasonably necessary to promote the public
7 interest and the purposes and policies of this chapter;

8 (b) For services proposed in a geographic area smaller than
9 an exchange or other market segmentation within which or to whom
10 such telecommunications service is proposed to be offered, a
11 local exchange telecommunications company may petition the
12 commission to define and establish a local exchange
13 telecommunications service or exchange access service as a
14 different local exchange telecommunications service or exchange
15 access service. The commission shall approve such a proposal
16 unless it finds that such service in a smaller geographic area or
17 such other market segmentation is contrary to the public interest
18 or is contrary to the purposes of this chapter. Upon approval of
19 such a smaller geographic area or such other market segmentation
20 for a different service for one local exchange telecommunications
21 company, all other local exchange telecommunications companies
22 certified to provide service in that exchange may file a tariff
23 to use such smaller geographic area or such other market
24 segmentation to provide that service;

25 (c) For proposed different services described in paragraphs
26 (a) and (b) of this subdivision, the local exchange
27 telecommunications company which files a tariff to provide such
28 service shall provide the service to all similarly situated

1 customers, upon request in accordance with that company's
2 approved tariff, in the exchange or geographic area smaller than
3 an exchange or such other market segmentation for which the
4 tariff was filed, and no price proposed for such service by an
5 incumbent local exchange telecommunications company, other than
6 for a competitive service, shall be lower than its long-run
7 incremental cost, as defined in section 386.020, RSMo;

8 (3) The commission, on its own motion or upon motion of the
9 public counsel, may by order, after notice and hearing, define a
10 telecommunications service offered or provided by a
11 telecommunications company as a different telecommunications
12 service dependent upon the geographic area or other market within
13 which such telecommunications service is offered or provided and
14 apply different service classifications to such service only upon
15 a finding, based on clear and convincing evidence, that such
16 different treatment is reasonably necessary to promote the public
17 interest and the purposes and policies of this chapter.

18 5. No telecommunications company may charge a different
19 price per minute or other unit of measure for the same,
20 substitutable, or equivalent interexchange telecommunications
21 service provided over the same or equivalent distance between two
22 points without filing a tariff for the offer or provision of such
23 service pursuant to sections 392.220 and 392.230. In any
24 proceeding under sections 392.220 and 392.230 wherein a
25 telecommunications company seeks to charge a different price per
26 minute or other unit of measure for the same, substitutable, or
27 equivalent interexchange service, the burden shall be on the
28 subject telecommunications company to show that such charges are

1 in the public interest and consistent with the provisions and
2 purposes of this chapter. The commission may modify or prohibit
3 such charges if the subject telecommunications company fails to
4 show that such charges are in the public interest and consistent
5 with the provisions and purposes of this chapter. This
6 subsection shall not apply to reasonable price discounts based on
7 the volume of service provided, so long as such discounts are
8 nondiscriminatory and offered under the same rates, terms, and
9 conditions throughout a telecommunications company's certificated
10 or service area.

11 6. Every telecommunications company operating in this state
12 shall receive, transmit and deliver, without discrimination or
13 delay, the conversations and messages of every other
14 telecommunications company with whose facilities a connection may
15 have been made.

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

19 8. Customer-specific pricing is authorized on an equal
20 basis for incumbent and alternative local exchange companies, and
21 for interexchange telecommunications companies for:

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

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

26 (3) Any business service offered in an exchange in which
27 basic local telecommunications service offered [to business
28 customers] by the incumbent local exchange telecommunications

1 company has been declared competitive under section 392.245, and
2 any retail business service offered to an end-user in a
3 noncompetitive exchange.

4 9. This act shall not be construed to prohibit the
5 commission, upon determining that it is in the public interest,
6 from altering local exchange boundaries, provided that the
7 incumbent local exchange telecommunications company or companies
8 serving each exchange for which the boundaries are altered
9 provide notice to the commission that the companies approve the
10 alteration of exchange boundaries.

11 10. Notwithstanding any other provision of this section,
12 every telecommunications company is authorized to offer term
13 agreements of up to five years on any of its telecommunications
14 services.

15 11. Notwithstanding any other provision of this section,
16 every telecommunications company is authorized to offer
17 discounted rates or special promotions on any of its
18 telecommunications services to any existing, new, and/or former
19 customers.

20 12. Packages of services may be offered on an equal basis
21 by incumbent and alternative local exchange companies and shall
22 not be subject to regulation under section 392.240 or 392.245,
23 nor shall packages of services be subject to the provisions of
24 subsections 1 through 5 of this section, provided that each
25 telecommunications service included in a package is available
26 apart from the package of services and still subject to
27 regulation under section 392.240 or 392.245. For the purposes of
28 this subsection, a "package of services" includes more than one

1 telecommunications service or one or more telecommunications
2 service combined with one or more nontelecommunications service.
3 Any tariff to introduce a new package or to make any change to an
4 existing package, except for the elimination of a package, shall
5 be filed, on an informational basis, with the commission at least
6 one day prior to the introduction of such new package or
7 implementation of such change. Any tariff to eliminate an
8 existing package shall be filed, on an informational basis, with
9 the commission at least ten days prior to the elimination of the
10 package.

11 392.220. 1. Every telecommunications company shall print
12 and file with the commission schedules showing the rates, rentals
13 and charges for service of each and every kind by or over its
14 facilities between points in this state and between each point
15 upon its facilities and all points upon all facilities leased or
16 operated by it and between each point upon its facilities or upon
17 any facility leased or operated by it and all points upon the
18 line of any other telecommunications company whenever a through
19 service or joint rate shall have been established between any two
20 points. If no joint rate over through facilities has been
21 established, the several companies joined over such through
22 facilities shall file with the commission the separately
23 established rates and charges applicable where through service is
24 afforded. Such schedule shall plainly state the places between
25 which telecommunications service will be rendered and shall also
26 state separately all charges and all privileges or facilities
27 granted or allowed and any rules or regulations or forms of
28 contract which may in any wise change, affect or determine any or

1 the aggregate of the rates, rentals or charges for the service
2 rendered. Such schedule shall be plainly printed and kept open
3 to public inspection. The commission shall have the power to
4 prescribe the form of every such schedule and may from time to
5 time prescribe, by order, changes in the form thereof. The
6 commission shall also have power to establish rules and
7 regulations for keeping such schedules open to public inspection
8 and may from time to time modify the same. Every
9 telecommunications company shall file with the commission as and
10 when required by it a copy of any contract, agreement or
11 arrangement in writing with any other telecommunications company
12 or with any other corporation, association or person relating in
13 any way to the construction, maintenance or use of
14 telecommunications facilities or service by or rates and charges
15 over or upon any facilities.

16 2. Unless the commission otherwise orders, and except for
17 the rates charged by a telephone cooperative for providing
18 telecommunications service within an exchange or within a local
19 calling scope as determined by the commission other than the
20 rates for exchange access service, no change shall be made in any
21 rate, charge or rental, or joint rate, charge or rental which
22 shall have been filed by a telecommunications company in
23 compliance with the requirements of sections 392.190 to 392.530,
24 except after thirty days' notice to the commission, which notice
25 shall plainly state the changes proposed to be made in the
26 schedule then in force and the time when the changed rate, charge
27 or rental shall go into effect; and all proposed changes shall be
28 shown by filing new schedules or shall be plainly indicated upon

1 the schedules filed and in force at the time and kept open to
2 public inspection. The commission for good cause shown may allow
3 changes in rates, charges or rentals without requiring the thirty
4 days' notice, under such conditions as it may prescribe. All
5 such changes shall be immediately indicated upon its schedules by
6 such telecommunications company. No telecommunications company
7 shall charge, demand, collect or receive a different compensation
8 for any service rendered or to be rendered than the charge
9 applicable to such service as specified in its schedule on file
10 and in effect at that time. No telecommunications company shall
11 refund or remit directly or indirectly any portion of the rate or
12 charge so specified, nor extend to any person or corporation any
13 form of contract or agreement, or any rule or regulation, or any
14 privilege or facility other than such privileges and facilities
15 as are contemplated by sections 392.200, 392.245, and 392.455,
16 except such as are specified in its schedule filed and in effect
17 at the time and regularly and uniformly extended to all persons
18 and corporations under like circumstances for a like or
19 substantially similar service.

20 3. No telecommunications company subject to the provisions
21 of this law shall, directly or indirectly, give any free or
22 reduced service, or any free pass or frank for the provision of
23 telecommunications services between points within this state,
24 except to its officers, employees, agents, surgeons, physicians,
25 attorneys at law and their families; to persons or corporations
26 exclusively engaged in charitable and eleemosynary work and
27 ministers of religions; to officers and employees of other
28 telegraph corporations and telephone corporations, railroad

1 corporations and street railroad corporations; public education
2 institutions, public libraries and not-for-profit health care
3 institutions. This subsection shall not apply to state,
4 municipal or federal contracts.

5 4. Any proposed rate or charge for any new
6 telecommunications service which has not previously been provided
7 by a telecommunications company to its Missouri customers may be
8 suspended by the commission for a period not to exceed [sixty]
9 thirty days from the proposed effective date of such proposed
10 rate or charge. This subsection shall not be applicable to any
11 new price or method of pricing for a service presently being
12 offered by any telecommunications company to its Missouri
13 customers. Upon proposing a rate or charge for a
14 telecommunications service which has not previously been provided
15 by a telecommunications company to its Missouri customers, the
16 offeror must file with the commission its justification for
17 considering such offering a new service and such other
18 information as may be required by rule or regulation, and must
19 identify that service as being noncompetitive, transitionally
20 competitive or competitive. If the offeror is a noncompetitive
21 or transitionally competitive telecommunications company and it
22 proposes such service as a transitionally competitive or
23 competitive telecommunications service, the telecommunications
24 service shall be treated as a transitionally competitive
25 telecommunications service until such time as the commission
26 finally determines the appropriate classification. If the
27 offeror is a competitive telecommunications company and it
28 proposes such service as a competitive service, the competitive

1 classification proposed by the offeror of the service shall apply
2 until such time as the commission finally determines the
3 appropriate classification. Such final determination by the
4 commission of the appropriate classification of such service may
5 be made by the commission after the end of the maximum
6 ~~【sixty-day】~~ thirty-day suspension period, but any such decision
7 by the commission issued after the maximum ~~【sixty-day】~~ thirty-day
8 suspension period shall be prospective in nature. The commission
9 shall expedite proceedings under this subsection in order to
10 facilitate the rapid introduction of new telecommunications
11 products and services into the marketplace.

12 5. Unless the commission otherwise orders, any change in
13 rates or charges, or change in any classification or tariff
14 resulting in a change in rates or charges, for any telephone
15 cooperative shall be filed, on an informational basis, with the
16 commission at least thirty days prior to the date for
17 implementation of such change. Nothing contained in this section
18 shall be construed as conferring jurisdiction upon the commission
19 over the rates charged by a telephone cooperative for providing
20 telecommunications service within an exchange or within a local
21 calling scope as determined by the commission, except for
22 exchange access service.

23 6. If after notice and hearing, the commission determines
24 that a telecommunications company has violated the requirements
25 of section 392.200 or this section, it may revoke the certificate
26 of service authority under which that telecommunications company
27 operates and shall direct its general counsel to initiate an
28 action under section 386.600, RSMo, to recover penalties from

1 such telecommunications company in an amount not to exceed the
2 revenues received as a result of such violation multiplied by
3 three or the gross jurisdictional operating revenues of that
4 company for the preceding twelve months, the provisions of
5 section 386.570, RSMo, notwithstanding.

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

19 2. Upon application to the commission, a telecommunications
20 company may, in special cases, after investigation, be authorized
21 by the commission to charge less for a longer than for a shorter
22 distance service for the transmission of messages or
23 conversations, and the commission may from time to time prescribe
24 the extent to which such telecommunications companies may be
25 relieved from the operation and requirements of this section.

26 3. Whenever there shall be filed with the commission by any
27 telecommunications company, other than a small telephone company,
28 any schedule stating a new individual or joint rate, rental or

1 charge, or any new individual or joint regulation or practice
2 affecting any rate, rental or charge, the commission shall have,
3 and it is hereby given, authority, either upon complaint or upon
4 its own initiative without complaint, at once, and if it so
5 orders without answer or other formal pleading by the interested
6 telecommunications company or companies, but upon reasonable
7 notice, to enter upon a hearing concerning the propriety of such
8 rate, rental, charge, regulation or practice; and pending such
9 hearing and the decision thereon the commission, upon filing with
10 such schedule and delivering to the telecommunications company
11 affected thereby a statement in writing of its reasons for such
12 suspension, may suspend the operation of such schedule and defer
13 the use of such rate, rental, charge, regulation or practice, but
14 not for a longer period than [one hundred and twenty] sixty days
15 beyond the time when such rate, rental, charge, regulation or
16 practice would otherwise go into effect; and after full hearing,
17 whether completed before or after the rate, rental, charge,
18 regulation or practice goes into effect, the commission may make
19 such order in reference to such rate, rental, charge, regulation
20 or practice as would be proper in a proceeding initiated after
21 the rate, rental, charge, regulation or practice had become
22 effective, however, if any such hearing cannot be concluded
23 within the period of suspension, as above stated, the commission
24 may, in its discretion, extend the time of suspension for a
25 further period not exceeding [six months] ninety days.

26 4. For the purposes of this section, a "small telephone
27 company" is defined as a local exchange telecommunications
28 company which serves no more than twenty-five thousand subscriber

1 access lines in the state of Missouri.

2 5. Whenever a small telephone company seeks to implement
3 any new individual or joint rate, rental or charge, or any
4 individual or joint regulation or practice affecting any rate,
5 rental or charge, it shall file same with the commission and
6 notify its customers of such change at least thirty days in
7 advance of the date on which the new rate, rental, charge,
8 regulation or practice is proposed to become effective. Upon the
9 filing by a small telephone company of any new individual or
10 joint rate, rental or charge, or any new individual or joint
11 regulation or practice affecting any rate, rental or charge, the
12 commission shall have, and it is hereby given, authority, either
13 upon complaint or upon its own initiative without complaint, at
14 once, and if it so orders without answer or other formal pleading
15 by the interested small telephone company or companies, but upon
16 reasonable notice, to enter upon a hearing concerning the
17 propriety of such rate, rental, charge, regulation or practice;
18 and pending such hearing and the decision thereon the commission,
19 upon filing with such schedule and delivering to the small
20 telephone company affected thereby a statement in writing of its
21 reasons for such suspension, may suspend the operation of such
22 schedule and defer the use of such rate, rental, charge,
23 regulation or practice, but not for a longer period than one
24 hundred fifty days beyond the time when such rate, rental,
25 charge, regulation or practice would otherwise go into effect.
26 If the commission fails to issue its decision within the
27 one-hundred-fifty-day suspension period, the investigation shall
28 be closed and the rate, rental, charge, regulation or practice

1 shall be considered approved for all purposes.

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

9 392.245. 1. The commission shall have the authority to
10 ensure that rates, charges, tolls and rentals for
11 telecommunications services are just, reasonable and lawful by
12 employing price cap regulation. Any rate, charge, toll, or
13 rental that does not exceed the maximum allowable price under
14 this section shall be deemed to be just, reasonable, and lawful.
15 As used in this chapter, "price cap regulation" shall mean
16 establishment of maximum allowable prices for telecommunications
17 services offered by an incumbent local exchange
18 telecommunications company, which maximum allowable prices shall
19 not be subject to increase except as otherwise provided in this
20 section.

21 2. A large incumbent local exchange telecommunications
22 company shall be subject to regulation under this section upon a
23 determination by the commission that an alternative local
24 exchange telecommunications company has been certified to provide
25 basic local telecommunications service or an interconnected voice
26 over Internet protocol service provider has been registered to
27 provide service under section 392.550, and is providing such
28 service in any part of the large incumbent company's service

1 area. A small incumbent local exchange telecommunications
2 company may elect to be regulated under this section upon
3 providing written notice to the commission if an alternative
4 local exchange telecommunications company has been certified to
5 provide basic local telecommunications service or an
6 interconnected voice over Internet protocol service provider has
7 been registered to provide service under section 392.550, and is
8 providing such service, or if two or more commercial mobile
9 service providers providing wireless two-way voice communications
10 services are providing services, in any part of the small
11 incumbent company's service area, and the incumbent company shall
12 remain subject to regulation under this section after such
13 election.

14 3. Except as otherwise provided in this section, the
15 maximum allowable prices established for a company under
16 subsection 1 of this section shall be those in effect on December
17 thirty-first of the year preceding the year in which the company
18 is first subject to regulation under this section. Tariffs
19 authorized under subsection 9 of this section shall be phased in
20 as provided under such tariffs as approved by the commission.

21 4. (1) Except as otherwise provided in subsections 8 and 9
22 of this section and section 392.248, the maximum allowable prices
23 for exchange access and basic local telecommunications services
24 of a small, incumbent local exchange telecommunications company
25 regulated under this section shall not be changed for a period of
26 twelve months after the date the company is subject to regulation
27 under this section. Except as otherwise provided in subsections
28 8 and 9 of this section and section 392.248, the maximum

1 allowable prices for exchange access and basic local
2 telecommunications services of a large, incumbent local exchange
3 telecommunications company regulated under this section shall not
4 be changed prior to January 1, 2000. Thereafter, the maximum
5 allowable prices for exchange access and basic local
6 telecommunications services of an incumbent local exchange
7 telecommunications company shall be annually changed by [one of]
8 the following methods:

9 (a) By the change in the [telephone service component of
10 the] Consumer Price Index [(CPI-TS)] (CPI), as published by the
11 United States Department of Commerce or its successor agency for
12 the preceding twelve months; provided however, that if such a
13 change in the [CPI-TS] (CPI) for the preceding twelve months is
14 negative, upon request by the company and approval by the
15 commission for good cause shown, the commission may waive any
16 requirement to reduce prices of exchange access and basic local
17 telecommunications service and those existing prices shall remain
18 the maximum allowable prices for purposes of this section until
19 the next annual change. All revenues that are attributable to a
20 [CPI-TS] (CPI) reduction waiver shall be used for the purposes
21 approved by the commission to benefit local exchange ratepayers
22 in a specific exchange or exchanges, including but not limited to
23 expanded local calling scopes; [or]

24 (b) [Upon request by the company and approval by the
25 commission, by the change in the Gross Domestic Product Price
26 Index (GDP-PI), as published by the United States Department of
27 Commerce or its successor agency for the preceding twelve months,
28 minus the productivity offset established for telecommunications

1 service by the Federal Communications Commission and adjusted for
2 exogenous factors.] Notwithstanding the foregoing, companies that
3 are subject to price-cap regulation and that have
4 telecommunications services in one or more exchanges classified
5 as competitive may increase the maximum allowable rate for basic
6 local telecommunications service in noncompetitive exchanges at a
7 level not to exceed the statewide average for basic local
8 telecommunications service in the competitively classified
9 exchanges of that company.

10 (2) The commission shall approve a change to a maximum
11 allowable price or make a determination regarding a request for
12 waiver filed pursuant to [paragraph (a) of] subdivision (1) of
13 this subsection within forty-five days of filing of notice by the
14 local exchange telecommunications company. An incumbent local
15 exchange telecommunications company shall file a tariff to reduce
16 the rates charged for any service in any case in which the
17 current rate exceeds the maximum allowable price established
18 under this subsection.

19 (3) [As a part of its request under paragraph (b) of
20 subdivision (1) of this subsection, a company may seek commission
21 approval to use a different productivity offset in lieu of the
22 productivity offset established by the Federal Communications
23 Commission. An adjustment under paragraph (b) of subdivision (1)
24 of this subsection shall not be implemented if the commission
25 determines, after notice and hearing to be conducted within
26 forty-five days of the filing of the notice of a change to a
27 maximum allowable price, that it is not in the public interest.
28 In making such a determination, the commission shall consider the

1 relationship of the proposed price of service to its cost and the
2 impact of competition on the incumbent local exchange
3 telecommunications company's intrastate revenues from regulated
4 telecommunications services. Any adjustments for exogenous
5 factors shall be allocated to the maximum allowable prices for
6 exchange access and basic local telecommunications service in the
7 same percentage as the revenues for such company bears to such
8 company's total revenues from basic local, nonbasic and exchange
9 access services for the preceding twelve months.

10 (4) For the purposes of this section, the term "exogenous
11 factor" shall mean a cumulative impact on a local exchange
12 telecommunications company's intrastate regulated revenue
13 requirement of more than three percent, which is attributable to
14 federal, state or local government laws, regulations or policies
15 which change the revenue, expense or investment of the company,
16 and the term "exogenous factor" shall not include the effect of
17 competition on the revenue, expense or investment of the company
18 nor shall the term include any assessment made under section
19 392.248.

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

27 5. Each telecommunications service offered to business
28 customers, other than exchange access service, of an incumbent

1 local exchange telecommunications company regulated under this
2 section shall be classified as competitive in any exchange in
3 which at least two nonaffiliated entities in addition to the
4 incumbent local exchange company are providing basic local
5 telecommunications service to business or residential customers
6 within the exchange. Each telecommunications service offered to
7 residential customers, other than exchange access service, of an
8 incumbent local exchange telecommunications company regulated
9 under this section shall be classified as competitive in an
10 exchange in which at least two nonaffiliated entities in addition
11 to the incumbent local exchange company are providing basic local
12 telecommunications service to residential customers within the
13 exchange. For purposes of this subsection and not for purposes
14 of defining the commission's jurisdiction:

15 (1) Commercial mobile service providers as identified in 47
16 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be
17 considered as entities providing basic local telecommunications
18 service, provided that only one such nonaffiliated provider shall
19 be considered as providing basic local telecommunications service
20 within an exchange. If the commercial mobile service provider
21 does not designate customers by business or residential class,
22 such provider will be deemed to be providing service to both
23 business and residential customers;

24 (2) Any entity providing local voice service in whole or in
25 part over telecommunications facilities or other facilities in
26 which it or one of its affiliates have an ownership interest
27 shall be considered as **[a]** providing basic local
28 telecommunications service **[provider]** regardless of whether such

1 entity is subject to regulation by the commission, including any
2 interconnected voice over Internet protocol service provider
3 registered under section 392.550. A provider of local voice
4 service that requires the use of a third party, unaffiliated
5 broadband network or dial-up Internet network for the origination
6 of local voice service shall not be considered a basic local
7 telecommunications service provider. For purposes of this
8 subsection only, a "broadband network" is defined as a connection
9 that delivers services at speeds exceeding two hundred kilobits
10 per second in at least one direction;

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

15 (4) Telecommunications companies only offering prepaid
16 telecommunications service or only reselling telecommunications
17 service as defined in subdivision [(46)] (54) of section 386.020,
18 RSMo, in the exchange being considered for competitive
19 classification shall not be considered entities providing basic
20 telecommunications service; [and]

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

24 (6) Upon request of an incumbent local exchange
25 telecommunications company seeking competitive classification of
26 [business service or residential service, or both] its services
27 under this subsection, the commission shall, within thirty days
28 of the request, determine whether [the requisite number of

1 entities are] there are at least two entities providing basic
2 local telecommunications service [to business or residential
3 customers, or both,] in an exchange and if so shall approve
4 tariffs designating all such [business or residential] services
5 other than exchange access service, as competitive within such
6 exchange. Notwithstanding any other provision of this
7 subsection, any incumbent local exchange company may petition the
8 commission for competitive classification within an exchange
9 based on competition from any entity providing local voice
10 service in whole or in part by using its own telecommunications
11 facilities or other facilities or the telecommunications
12 facilities or other facilities of a third party, including those
13 of the incumbent local exchange company as well as providers that
14 rely on an unaffiliated third-party Internet service. The
15 commission shall approve such petition within sixty days [unless
16 it finds that such competitive classification is contrary to the
17 public interest]. The commission shall maintain records of
18 [regulated] certified and registered providers of local voice
19 service, including those [regulated] providers who provide local
20 voice service over their own facilities, or through the use of
21 facilities of another provider of local voice service. In
22 reviewing an incumbent local exchange telephone company's request
23 for competitive status in an exchange, the commission shall
24 consider their own records concerning ownership of facilities and
25 shall make all inquiries as are necessary and appropriate from
26 [regulated] certified and registered providers of local voice
27 service to determine the extent and presence of [regulated] local
28 voice providers in an exchange. If the services of an incumbent

1 local exchange telecommunications company are classified as
2 competitive under this subsection, the local exchange
3 telecommunications company may thereafter adjust its rates for
4 such competitive services upward or downward as it determines
5 appropriate in its competitive environment, upon filing tariffs
6 which shall become effective within the time lines identified in
7 section 392.500. The commission [~~shall~~] may, [~~at least~~] not more
8 than once every two years[, or where an incumbent local exchange
9 telecommunications company increases rates for basic local
10 telecommunications services in an exchange classified as
11 competitive,] review those exchanges where an incumbent local
12 exchange carrier's services have been classified as competitive,
13 to determine if the conditions of this subsection for competitive
14 classification continue to exist in the exchange and if the
15 commission determines, after hearing, that such conditions no
16 longer exist for the incumbent local exchange telecommunications
17 company in such exchange, it shall reimpose upon the incumbent
18 local exchange telecommunications company, in such exchange, the
19 provisions of paragraph (c) of subdivision (2) of subsection 4 of
20 section 392.200 and the new maximum allowable prices for basic
21 local telecommunications service in such exchange shall be
22 established by the provisions of [~~subsections~~] subsection 4 [~~and~~
23 11] of this section[, and, in any such case, the maximum
24 allowable prices established for the telecommunications services
25 of such incumbent local exchange telecommunications company shall
26 reflect all index adjustments which were or could have been filed
27 from all preceding years since the company's maximum allowable
28 prices were first adjusted pursuant to subsection 4 or 11 of this

1 section.];

2 (7) Upon a finding that fifty-five percent or more of an
3 incumbent local exchange telecommunications company's total
4 subscriber access lines are in exchanges where such company's
5 services have been declared competitive, the incumbent local
6 exchange telecommunications company shall be deemed competitive
7 and shall no longer be subject to price-cap regulation, except
8 that rates charged for basic local telecommunications service in
9 exchanges that were noncompetitive immediately prior to this
10 finding can be increased to a rate that is no higher than the
11 statewide average rate for basic local telecommunications service
12 in the incumbent local exchange company's competitively
13 classified exchanges for a period of four years. During the four
14 year period, any annual increase in rates for residential basic
15 local telecommunications service shall not exceed two dollars and
16 fifty cents per line per month. Rates charged for exchange
17 access service by an incumbent local exchange telecommunications
18 company deemed competitive shall not exceed the rates charged at
19 the time the company was deemed competitive;

20 (8) An incumbent local exchange telecommunications company
21 deemed competitive under this section and all alternative local
22 exchange telecommunications companies shall not be required to
23 comply with customer billing rules, network engineering and
24 maintenance rules, and rules requiring the recording and
25 submitting of service objectives or surveillance levels
26 established by the commission, but shall be subject to commission
27 authority to hear and resolve customer complaints to the extent
28 the customer complaint is based on Truth-in-Billing regulations

1 established by the Federal Communications Commission, or network
2 engineering and maintenance standards established within the
3 National Electric Safety Code. In addition, the commission shall
4 continue to have authority to hear and resolve customer
5 complaints to the extent such complaints are based on a failure
6 to comply with the provisions of applicable tariffs, or a failure
7 to comply with the rules of the commission other than those rules
8 related to customer billing, network engineering and maintenance,
9 and service objectives and surveillance levels or a failure to
10 provide service in a manner that is safe, adequate, usual and
11 customary in the telecommunications industry;

12 (9) The commission may reimpose its customer billing rules,
13 network engineering and maintenance rules, and rules requiring
14 the recording and submitting of service objectives or
15 surveillance levels, as applicable, on an incumbent local
16 exchange telecommunications company that has been deemed
17 competitive under this section, only upon a finding that the
18 incumbent local exchange telecommunications company has engaged
19 in a pattern or practice of inadequate service in these subject
20 areas and that the reimposition of such rules is necessary to
21 ensure the protection of consumer rights and/or the public
22 safety. Prior to formal notice and hearing, the commission shall
23 notify the incumbent local exchange telecommunications company of
24 any deficiencies and provide such company an opportunity to
25 remedy such deficiencies in a reasonable amount of time, but not
26 less than sixty days. Should the incumbent local exchange
27 telecommunications company remedy such deficiencies within a
28 reasonable amount of time, the commission shall not reimpose the

1 applicable customer billing rules, network engineering and
2 maintenance rules, and rules requiring the recording and
3 submitting of service objectives or surveillance levels. Should
4 the incumbent local exchange telecommunications company fail to
5 remedy such deficiencies, the commission shall reimpose the
6 applicable customer billing rules, network engineering and
7 maintenance rules, and rules requiring the recording and
8 submitting of service objectives or surveillance levels, if it
9 finds that:

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

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

16 (c) Competitive market forces have been and will continue
17 to be insufficient to protect the majority of the incumbent local
18 exchange telecommunications company's customers;

19 (10) Should the commission determine that an emergency
20 exists that impacts public safety or is essential for the
21 protection of a majority of customers of all local exchange
22 telecommunications companies operating in this state, the
23 commission may, on an emergency basis, impose its customer
24 billing rules, network engineering and maintenance rules, and
25 rules requiring the recording and submitting of service
26 objectives or surveillance levels, as applicable, on all local
27 exchange telecommunications companies on a uniform and non-
28 discriminatory basis through the promulgation of emergency rules

1 pursuant to section 536.025, RSMo. The commission shall only
2 promulgate such emergency rules after determining that:

3 (a) The rules are essential for the protection of a
4 majority of customers of local exchange telecommunications
5 companies operating in this state;

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

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

12
13 Notwithstanding the provisions of subsection 7 of section
14 536.025, RSMo, emergency rules promulgated by the commission
15 pursuant to this subdivision shall remain in effect until the
16 legislature concludes its next regular legislative session
17 following the imposition of any such rules.

18 6. Nothing in this section shall be interpreted to alter
19 the commission's jurisdiction over quality and conditions of
20 [service] noncompetitive telecommunications services or to
21 relieve noncompetitive telecommunications companies from the
22 obligation to comply with commission rules relating to minimum
23 basic local and interexchange telecommunications service.

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

26 8. An incumbent local exchange telecommunications company
27 regulated under this section may reduce intrastate access rates,
28 including carrier common line charges, subject to the provisions

1 of subsection 9 of this section, to a level not to exceed one
2 hundred fifty percent of the company's interstate rates for
3 similar access services in effect as of December thirty-first of
4 the year preceding the year in which the company [is] first
5 [subject to regulation under this section] exercises its option
6 to rebalance rates under this subsection. [Absent commission
7 action under subsection 10 of this section, an incumbent local
8 exchange telecommunications company regulated under this section
9 shall have four years from the date the company becomes subject
10 to regulation under this section to make the adjustments
11 authorized under this subsection and subsection 9 of this
12 section.] Nothing in this subsection shall preclude an incumbent
13 local exchange telecommunications company from establishing its
14 intrastate access rates at a level lower than one hundred fifty
15 percent of the company's interstate rates for similar access
16 services in effect as of December thirty-first of the year
17 preceding the year in which the company [is] first [subject to
18 regulation under this section] exercises its option to rebalance
19 rates under this subsection.

20 9. Other provisions of this section to the contrary
21 notwithstanding [and no earlier than January 1, 1997], the
22 commission shall allow an incumbent local exchange
23 telecommunications company regulated under this section which
24 reduces its intrastate access service rates pursuant to
25 subsection 8 of this section to offset the annual revenue loss
26 resulting from [the first year's] its access service rate
27 reduction by increasing each year its monthly maximum allowable
28 prices applicable to basic local exchange telecommunications

1 services by an amount not to exceed one dollar fifty cents. A
2 large incumbent local exchange telecommunications company shall
3 not increase its monthly rates applicable to basic local
4 telecommunications service under this subsection unless it also
5 reduces its rates for intraLATA interexchange telecommunications
6 services by at least ten percent in the year it first exercises
7 its option to rebalance rates under subsection 8 of this section.

8 [No later than one year after the date the incumbent local
9 exchange telecommunications company becomes subject to regulation
10 under this section, the commission shall complete an
11 investigation of the cost justification for the reduction of
12 intrastate access rates and the increase of maximum allowable
13 prices for basic local telecommunications service. If the
14 commission determines that the company's monthly maximum
15 allowable average statewide prices for basic local
16 telecommunications service after adjustment pursuant to this
17 subsection will be equal to or less than the long-run incremental
18 cost, as defined in section 386.020, RSMo, of providing basic
19 local telecommunications service and that the company's
20 intrastate access rates after adjustment pursuant to this
21 subsection will exceed the long-run incremental cost, as defined
22 in section 386.020, RSMo, of providing intrastate access
23 services, the commission shall allow the company to offset the
24 revenue loss resulting from the remaining three-quarters of the
25 total needed to bring that company's intrastate access rates to
26 one hundred fifty percent of the interstate level by increasing
27 the company's monthly maximum allowable prices applicable to
28 basic local telecommunications service by an amount not to exceed

1 one dollar fifty cents on each of the next three anniversary
2 dates thereafter; otherwise, the commission shall order the
3 reduction of intrastate access rates and the increase of monthly
4 maximum allowable prices for basic local telecommunications
5 services to be terminated at the levels the commission determines
6 to be cost-justified.] The total annual revenue increase due to
7 the increase to the monthly maximum allowable prices for basic
8 local telecommunications service shall not exceed the total
9 annual revenue loss resulting from the reduction to intrastate
10 access service rates.

11 10. Any telecommunications company whose intrastate access
12 costs are reduced pursuant to subsections 8 and 9 of this section
13 shall decrease its rates for intrastate toll telecommunications
14 service to flow through such reduced costs to its customers. The
15 commission may permit a telecommunications company to defer a
16 rate reduction required by this subdivision until such
17 reductions, on a cumulative basis, reach a level that is
18 practical to flow through to its customers.

19 11. [The maximum allowable prices for nonbasic
20 telecommunications services of a small, incumbent local exchange
21 telecommunications company regulated under this section shall not
22 be changed until twelve months after the date the company is
23 subject to regulation under this section or, on an
24 exchange-by-exchange basis, until an alternative local exchange
25 telecommunications company is certified and providing basic local
26 telecommunications service in such exchange, whichever is
27 earlier. The maximum allowable prices for nonbasic
28 telecommunications services of a large, incumbent local exchange

1 telecommunications company regulated under this section shall not
2 be changed until January 1, 1999, or on an exchange-by-exchange
3 basis, until an alternative local exchange telecommunications
4 company is certified and providing basic local telecommunications
5 service in such exchange, whichever is earlier. Thereafter, the
6 maximum allowable prices for nonbasic telecommunications services
7 of an incumbent local exchange telecommunications company may be
8 annually increased by up to five percent for each of the
9 following twelve-month periods upon providing notice to the
10 commission and filing tariffs establishing the rates for such
11 services in such exchanges at such maximum allowable prices.
12 This subsection shall not preclude an incumbent local exchange
13 telecommunications company from proposing new telecommunications
14 services and establishing prices for such new services. An
15 incumbent local exchange telecommunications company may change
16 the rates for its services, consistent with the provisions of
17 subsections 2 through 5 of section 392.200, but not to exceed the
18 maximum allowable prices, by filing tariffs which shall be
19 approved by the commission within thirty days, provided that any
20 such rate is not in excess of the maximum allowable price
21 established for such service under this section.] All nonbasic
22 telecommunications services of an incumbent local exchange
23 telecommunications company that is subject to price-cap
24 regulation shall be exempt from limitations on maximum allowable
25 prices.

26 12. The commission shall permit an incumbent local exchange
27 telecommunications company regulated under this section to
28 determine and set its own depreciation rates which shall be used

1 for all intrastate regulatory purposes. Provided, however, that
2 such a determination is not binding on the commission in
3 determining eligibility for or reimbursement under the universal
4 service fund established under section 392.248.

5 13. Prior to January 1, 2006, the commission shall
6 determine the weighted, statewide average rate of nonwireless
7 basic local telecommunications services as of August 28, 2005.
8 The commission shall likewise determine the weighted, statewide
9 average rate of nonwireless basic local telecommunications
10 services two years and five years after August 28, 2005. The
11 commission shall report its findings to the general assembly by
12 January 30, 2008, and provide a second study by January 30, 2011.
13 If the commission finds that the weighted, statewide average rate
14 of nonwireless basic local telecommunications service in 2008 or
15 2011 is greater than the weighted, statewide average rate of
16 nonwireless basic local telecommunications service in 2006
17 multiplied by one plus the percentage increase in the Consumer
18 Price Index for all goods and services for the study periods, the
19 commission shall recommend to the general assembly such changes
20 in state law as the commission deems appropriate to achieve the
21 purposes set forth in section 392.185. In determining the
22 weighted, statewide average rate of nonwireless basic local
23 telecommunications service, the commission shall exclude rate
24 increases to nonwireless basic telecommunications service
25 permitted under subsections 8 and 9 of this section and section
26 392.240 or exogenous costs incurred by the providers of
27 nonwireless basic local telecommunications service.

28 392.361. 1. As an alternative to the provisions of section

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

13 2. The commission [or a petitioner] shall serve by regular
14 mail a copy of any petition or motion filed under subsection 1 of
15 this section on all telecommunications companies that have
16 applied for authority to provide or are authorized to provide
17 intrastate telecommunications service within this state. In
18 response to a petition filed [or a proceeding instituted upon its
19 own motion], the commission shall afford all interested persons
20 reasonable notice and an opportunity to be heard to determine
21 whether a telecommunications company or service may be subject to
22 sufficient competition to justify a lesser degree of regulation.
23 In making this determination, the commission shall, within nine
24 months of the filing of the petition [or initiation of a
25 proceeding] under this section, consider all relevant factors and
26 shall issue written findings of fact delineating all factors
27 considered. [The commission may, for good cause, extend the time
28 for determination for an additional three months. A second

1 extension period not exceeding three months may, for good cause,
2 be granted by the commission.] In any hearing involving the same
3 telecommunications service or company, the commission may, if
4 appropriate and if no new finding of fact is required, rely on a
5 finding of fact made in a prior hearing.

6 3. The commission may classify a telecommunications company
7 as a competitive telecommunications company [only] upon a finding
8 that [all] a majority of its telecommunications services offered
9 by such company are competitive telecommunications services.

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

16 (1) The subject telecommunications service offered by a
17 telecommunications company as a competitive telecommunications
18 service;

19 (2) The subject telecommunications service offered by a
20 noncompetitive or transitionally competitive telecommunications
21 company as a transitionally competitive telecommunications
22 service;

23 (3) The subject telecommunications company, subject to the
24 condition set forth in subsection 3 of this section, as a
25 competitive telecommunications company; or

26 (4) The subject interexchange telecommunications company as
27 a transitionally competitive telecommunications company.

28 5. By its order classifying a telecommunications service as

1 competitive or transitionally competitive or a telecommunications
2 company as competitive or transitionally competitive, the
3 commission may, with respect to that service or company and with
4 respect to one or more providers of that service, suspend or
5 modify the application of its rules or the application of any
6 statutory provision contained in sections 392.200 to 392.340,
7 except as provided in section 392.390. [The commission may
8 suspend different requirements for different telecommunications
9 companies, if such different treatment is reasonable and not
10 detrimental to the public interest.]

11 6. If the commission suspends the application of a
12 statutory requirement under this section, it may require a
13 telecommunications company to comply with any conditions
14 reasonably made necessary to protect the public interest by the
15 suspension of the statutory requirement. The exchange access
16 rates of an incumbent local exchange company that is declared a
17 competitive telecommunications company shall not exceed the rates
18 that were charged at the time the company became a competitive
19 telecommunications company. The exchange access rates of an
20 alternative local exchange company shall not exceed the exchange
21 access rates of the incumbent local exchange company against whom
22 the alternative local exchange company is competing.

23 7. [If necessary to protect the public interest, the
24 commission may at any time, by order, after hearing upon its own
25 motion or petition filed by the public counsel, a
26 telecommunications company, or any person or persons authorized
27 to file a complaint as to the reasonableness of any rates or
28 charges under section 386.390, RSMo, reimpose or modify the

1 statutory provisions suspended under subsection 5 of this section
2 upon finding that the company or service is no longer competitive
3 or transitionally competitive or that the lesser regulation
4 previously authorized is no longer in the public interest or no
5 longer consistent with the provisions and purposes of this
6 chapter.

7 8.] A telecommunications company may file a petition to
8 have a telecommunications service it then offers classified as
9 competitive or transitionally competitive under this section no
10 more than once every two years, unless exceptional circumstances
11 are demonstrated. A telecommunications company shall consolidate
12 in a single petition all telecommunications services the company
13 then offers which it seeks to classify as competitive or
14 transitionally competitive within two years from the date such
15 petition is filed, unless the commission determines, for good
16 cause shown, that a waiver of this provision should be granted.

17 8. Notwithstanding the foregoing or the provisions of
18 section 392.245, intrastate operator and directory services,
19 including directory assistance services, shall be deemed
20 competitive on a statewide basis for all local exchange
21 telecommunications companies.

22 392.370. [1.] After the effective date of an order of the
23 commission which finds, pursuant to section 392.361, that a
24 telecommunications service is sufficiently competitive to justify
25 a lesser degree of regulation, the same, substitutable, or
26 equivalent service offered by a transitionally competitive or
27 noncompetitive telecommunications company shall be classified as
28 transitionally competitive [pursuant to the procedure set out in

1 subsection 2 of section 392.490], if the telecommunications
2 service granted a lesser degree of regulation is authorized to be
3 provided anywhere within the certificated or service area of the
4 transitionally competitive or noncompetitive telecommunications
5 company. Any transitionally competitive telecommunications
6 service offered by a noncompetitive local exchange
7 telecommunications company shall be classified as a competitive
8 telecommunications service no later than three years after the
9 effective date of a tariff for such service bearing the
10 classification "transitionally competitive". Any transitionally
11 competitive service offered by a transitionally competitive
12 interexchange telecommunications company shall be classified as a
13 competitive telecommunications service no later than two years
14 after the effective date of a tariff for such service bearing the
15 classification "transitionally competitive". The exchange access
16 rates of an incumbent local exchange company that is declared a
17 competitive telecommunications company shall not exceed the rates
18 that were charged at the time the company became a competitive
19 telecommunications company. The exchange access rates of an
20 alternative local exchange company shall not exceed the exchange
21 access rates of the incumbent local exchange company against whom
22 the alternative local exchange company is competing.

23 [2. The commission may extend or reinstate a transitionally
24 competitive service classification applicable to any service
25 provided by a noncompetitive local exchange telecommunications
26 company for two periods in addition to the initial three-year
27 period, each additional period not to exceed three years, after
28 notice and hearing, upon the issuance of an order finding that a

1 competitive classification for such service is not in the public
2 interest or not consistent with the purposes and policies of this
3 chapter. The commission may extend or reinstate a transitionally
4 competitive service classification applicable to any service
5 provided by a transitionally competitive interexchange
6 telecommunications company for two periods in addition to the
7 initial two-year period, each additional period not to exceed two
8 years, after notice and hearing, upon the issuance of an order
9 finding that a competitive classification for such service is not
10 in the public interest or not consistent with the purposes and
11 policies of this chapter. The commission, on its own motion, or
12 public counsel or any telecommunications company, by complaint,
13 may initiate a proceeding in which the commission shall consider
14 whether to extend or reinstate a transitionally competitive
15 service classification under this section. In any proceeding
16 initiated under this subsection by the commission or the public
17 counsel, the burden to prove that such service is a competitive
18 telecommunications service shall be on the noncompetitive or
19 transitionally competitive telecommunications company providing
20 such service. The commission may consolidate different
21 proceedings under this section involving different transitionally
22 competitive telecommunications services for purposes of hearing.

23 3. The commission may issue an order, effective at or after
24 such time as the commission may no longer extend or reinstate a
25 transitionally competitive service classification, that
26 reclassifies a competitive or transitionally competitive
27 telecommunications service as a noncompetitive telecommunications
28 service if the commission, after notice and hearing upon its own

1 motion or petition filed by the public counsel, a
2 telecommunications company, or any person or persons authorized
3 to file a complaint as to the reasonableness of any rates or
4 charges under section 386.390, RSMo, determines that a
5 competitive classification for such service is not in the public
6 interest or not consistent with the provisions and purposes of
7 this chapter. Should the commission issue an order under this
8 subsection reclassifying a competitive or transitionally
9 competitive telecommunications service as noncompetitive it shall
10 thereafter apply equal regulation, with respect to such service,
11 to all telecommunications companies providing the same equivalent
12 or substitutable telecommunications service.

13 4. No tariff which proposes a new rate, rental, or charge
14 or new regulation or practice affecting any rate, rental, or
15 charge for a transitionally competitive telecommunications
16 service which is filed by a noncompetitive local exchange
17 telecommunications company, or a noncompetitive or transitionally
18 competitive interexchange telecommunications company, shall be
19 effective unless and until the noncompetitive local exchange
20 telecommunications company, or the noncompetitive or
21 transitionally competitive interexchange telecommunications
22 company, offering or providing, or seeking to offer or provide,
23 such proposed transitionally competitive telecommunications
24 service prepares and files a study of the cost of providing such
25 service. Such study may in the commission's discretion be given
26 proprietary treatment at the request of such company.

27 5. Except as provided in subsection 6 of this section, the
28 provisions of sections 392.220 and 392.230 shall apply to any

1 tariff filed for the offer or provision of a transitionally
2 competitive telecommunications service.

3 6. So long as a transitionally competitive interexchange
4 telecommunications company charges the same price per minute or
5 other unit of measure for the same, equivalent, or substitutable
6 interexchange telecommunications service provided over the same
7 or equivalent distance between any two points, the provisions of
8 subsections 4 and 5 of this section shall not apply to such
9 transitionally competitive interexchange telecommunications
10 company for any proposed decrease in rates for a transitionally
11 competitive interexchange telecommunications service. Such
12 proposed decrease shall instead be treated as a competitive
13 service pursuant to section 392.500.

14 7. A transitionally competitive telecommunications service
15 which becomes a competitive telecommunications service pursuant
16 to this section or section 392.361 shall no longer be subject to
17 the provisions of subsections 4, 5, and 6 of this section and any
18 increase or decrease in rates or charges applicable to such
19 competitive service shall be treated pursuant to section
20 392.500.]

21 392.420. The commission is authorized, in connection with
22 the issuance or modification of a certificate of interexchange or
23 local exchange service authority or the modification of a
24 certificate of public convenience and necessity for interexchange
25 or local exchange telecommunications service, to entertain a
26 petition [under section 392.361 and in accordance with the
27 procedures set out in section 392.361,] to suspend or modify the
28 application of its rules or the application of any statutory

1 provision contained in sections 392.200 to 392.340 if such waiver
2 or modification is otherwise consistent with the other provisions
3 of sections 392.361 to 392.520 and the purposes of this chapter.
4 In the case of an application for certificate of service
5 authority to provide basic local telecommunications service filed
6 by an alternative local exchange telecommunications company, and
7 for all existing alternative local exchange telecommunications
8 companies, the commission shall waive, at a minimum, the
9 application and enforcement of its quality of service and billing
10 standards rules, as well as the provisions of subsection 2 of
11 section 392.210, subsection 1 of section 392.240, and sections
12 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330,
13 and 392.340. Notwithstanding any other provision of law in this
14 chapter and chapter 386, RSMo, where an alternative local
15 exchange telecommunications company is authorized to provide
16 local exchange telecommunications services in an incumbent local
17 exchange telecommunications company's authorized service area,
18 the incumbent local exchange telecommunications company may opt
19 into all or some of the above-listed statutory and commission
20 rule waivers by filing a notice of election with the commission
21 that specifies which waivers are elected. In addition, where an
22 interconnected voice over Internet protocol service provider is
23 registered to provide service in an incumbent local exchange
24 telecommunications company's authorized service area under
25 section 392.550, the incumbent local exchange telecommunications
26 company may opt into all or some of the above-listed statutory
27 and commission rule waivers by filing a notice of election with
28 the commission that specifies which waivers are elected. The

1 commission may reimpose its quality of service and billing
2 standards rules, as applicable, on an incumbent local exchange
3 telecommunications company but not on a company granted
4 competitive status under subdivision (7) of subsection 5 of
5 section 392.245 in an exchange where there is no alternative
6 local exchange telecommunications company or interconnected voice
7 over Internet protocol service provider that is certificated or
8 registered to provide local voice service only upon a finding,
9 following formal notice and hearing, that the incumbent local
10 exchange telecommunications company has engaged in a pattern or
11 practice of inadequate service. Prior to formal notice and
12 hearing, the commission shall notify the incumbent local exchange
13 telecommunications company of any deficiencies and provide such
14 company an opportunity to remedy such deficiencies in a
15 reasonable amount of time, but not less than sixty days. Should
16 the incumbent local exchange telecommunications company remedy
17 such deficiencies within a reasonable amount of time, the
18 commission shall not reimpose its quality of service or billing
19 standards on such company.

20 392.450. 1. The commission shall approve an application
21 for a certificate of local exchange service authority to provide
22 basic local telecommunications service or for the resale of basic
23 local telecommunications service only upon a showing by the
24 applicant, and a finding by the commission, after notice and
25 hearing that the applicant has complied with the certification
26 process established pursuant to section 392.455.

27 2. In addition, the commission shall adopt such rules,
28 consistent with section 253(b) of the federal Telecommunications

1 Act of 1996 to preserve and advance universal service, protect
2 the public safety and welfare, ensure the continued quality of
3 telecommunications services, and safeguard the rights of
4 consumers. Such rules, at a minimum, shall require that all
5 applicants seeking a certificate to provide basic local
6 telecommunications services under this section:

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

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

15 3. An alternative local exchange telecommunications company
16 which possesses a certificate of service authority to provide
17 basic local telecommunications service as of August 28, 2008, in
18 some but not all exchanges of the state may request the
19 commission to modify its existing certificate to include some or
20 all of the remaining exchanges in the state. The commission
21 shall grant such request within thirty days of its filing as long
22 as the alternative local exchange telecommunications company is
23 in good standing, in all respects, with all applicable commission
24 rules and requirements.

25 4. Nothing in this chapter or in chapter 386, RSMo, is
26 intended to alter the rights and obligations arising under
27 federal law, including the interconnection and unbundling
28 provisions of 47 U.S.C. Sections 251 and 252, irrespective of the

1 type of technology being used by the requesting local exchange
2 telecommunications company and whether the local exchange
3 telecommunications company is providing telecommunications
4 service or interconnected voice over Internet protocol service,
5 as those terms are defined in chapter 386, RSMo, and the
6 jurisdiction and authority of the commission to mediate and
7 arbitrate disputes arising under said federal law provisions
8 shall remain unaffected.

9 392.451. [1. Notwithstanding any provisions of this act to
10 the contrary, and consistent with section 253(f) of the federal
11 Telecommunications Act of 1996, the commission shall approve an
12 application for a certificate of local exchange service authority
13 to provide basic local telecommunications service or for the
14 resale of basic local telecommunications service in an area that
15 is served by a small incumbent local exchange telecommunications
16 company only upon a showing by the applicant, and a finding by
17 the commission, after notice and hearing, that:

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

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

26 2. In addition, the commission shall adopt such rules,
27 consistent with section 253(b) of the federal Telecommunications
28 Act of 1996 to preserve and advance universal service, protect

1 the public safety and welfare, ensure the continued quality of
2 telecommunications services, and safeguard the rights of
3 consumers. Such rules, at a minimum, shall require that all
4 applicants seeking a certificate to provide basic local
5 telecommunications services under this section:

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

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

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

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

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

26 392.480. [1.] Except as provided in section 392.520, all
27 telecommunications services offered or provided by
28 telecommunications companies shall be offered under tariff and

1 classified as either competitive, transitionally competitive, or
2 noncompetitive telecommunications services, subject to proper
3 certification and other applicable provisions of this chapter.
4 Any tariff filed with the commission shall indicate whether the
5 telecommunications service to be offered or provided is
6 competitive, transitionally competitive, or noncompetitive.

7 [2. Subject to the provisions of subsection 4 of section
8 392.220, an offering or the provision of a telecommunications
9 service shall be classified as competitive only if, and only to
10 the extent that, the commission has issued an order to that
11 effect pursuant to section 392.361 or pursuant to its findings
12 issued in an order granting or modifying a certificate of
13 authority or certificate of public convenience and necessity
14 pursuant to section 392.410 or if, and only to the extent that, a
15 transitionally competitive telecommunications service has become
16 a competitive telecommunications service pursuant to section
17 392.370. Subject to the provisions of subsection 4 of section
18 392.220, an offering or the provision of a telecommunications
19 service shall be classified as transitionally competitive only
20 if, and only to the extent that, the commission has issued an
21 order to that effect pursuant to section 392.361 or pursuant to
22 its findings issued in an order granting or modifying a
23 certificate of authority or certificate of public convenience and
24 necessity pursuant to section 392.410 or if, and only to the
25 extent that, a telecommunications service has become a
26 transitionally competitive telecommunications service pursuant to
27 subsection 1 of section 392.370 and subsection 2 of section
28 392.490. All telecommunications services not properly classified

1 as competitive or transitionally competitive shall be classified
2 as noncompetitive telecommunications service.]

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

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

24 3. The provisions of sections 392.220, 392.230,
25 [subsections 4 and 5 of section 392.370,] and [section] 392.500
26 shall not apply to any rate increase or decrease within the band
27 or range authorized pursuant to this section. A
28 telecommunications company shall file written notice of the rate

1 change and its effective date with the commission within ten days
2 after the effective date of any increase or decrease authorized
3 pursuant to this section.

4 4. Any tariffs that have been approved by the commission
5 prior to September 28, 1987, which establish a range or band of
6 rates within which range or band of rates a change in rates or
7 charges for such telecommunications service could be made without
8 prior notice or prior commission approval shall be deemed
9 approved by the commission. The provisions of sections 392.220,
10 392.230, [subsections 4 and 5 of section 392.370,] and [section]
11 392.500 shall not apply to any rate increase or decrease within
12 such band or range.

13 392.520. 1. The commission shall have jurisdiction over
14 the provision of private shared tenant services and customer
15 owned coin telephone telecommunications services, but shall
16 subject such services to the minimum regulation permitted by this
17 chapter for competitive telecommunications services. The
18 commission shall exempt the provision of private shared and
19 customer owned coin telephone telecommunications services from
20 the tariff filing requirements of sections 392.220, 392.230,
21 [subsections 4 and 5 of section 392.370,] and [section] 392.500
22 and may exempt the provision of such telecommunications services
23 from the provisions of subdivisions (1) and (3) of section
24 392.390 and from the provisions of section 386.370, RSMo.

25 2. The commission shall establish the rates or charges and
26 terms of connection for access by such services to the local
27 exchange network. In so doing, the commission shall consider the
28 network integrity of the principal provider of local exchange

1 service and the impact of private shared tenant services on the
2 cost to provide, and rates or charges, for local exchange
3 service. If the commission finds, upon notice and investigation,
4 that tenants in private shared tenant services locations have no
5 alternative access to a local exchange telecommunications company
6 providing basic local telecommunications service, it may require
7 the private shared tenant services provider to make alternative
8 facilities available on reasonable terms and conditions at
9 reasonable prices.

10 392.550. 1. No person, corporation, or other entity shall
11 offer or provide interconnected voice over Internet protocol
12 service as defined in section 386.020, RSMo, without first having
13 obtained a registration from the commission allowing it to do so.
14 Upon application, the commission shall grant a registration to
15 any person, corporation, or other entity to provide
16 interconnected voice over Internet protocol service, subject to
17 the provisions of this section.

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

26 3. The commission shall grant a registration, without a
27 hearing and no later than thirty days following the filing of an
28 application accompanied by an affidavit signed by an officer or

1 general partner of the applicant stating the following:

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

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

7 (3) That the applicant is legally, financially, and
8 technically qualified to provide interconnected voice over
9 Internet protocol services;

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

14 (5) That the applicant will charge and collect from its
15 end-user customers on interconnected voice over Internet protocol
16 service, and remit to the appropriate authority, fees and
17 surcharges in the same manner as are charged and collected upon
18 end user customers of local exchange telecommunications service
19 and remitted by local exchange telecommunications companies,
20 including but not necessarily limited to:

21 (a) Telecommunications programs under section 209.255,
22 RSMo;

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

24 (c) Local enhanced 911;

25 (d) Any applicable license tax;

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

28 (7) That the applicant will file, either directly or

1 indirectly through an affiliated competitive local exchange
2 carrier, with the commission an annual report at a time and
3 covering the yearly period fixed by the commission. Verification
4 shall be made by the official holding office at the time of the
5 filing of such report, and if not made upon the knowledge of the
6 person verifying, the same shall set forth in general terms the
7 sources of his or her information and the grounds for his or her
8 belief as to any matters not stated to be verified on his or her
9 knowledge. Such annual report shall be verified by the oath of
10 the president, treasurer, general manager, or receiver, if any,
11 of any of such companies, or by the person required to file the
12 same. The commission shall prescribe the form of such reports
13 and the character of the information to be contained therein;
14 provided, however, that such form and character of the
15 information to be provided shall be limited to:

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

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

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

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

27 4. Notwithstanding any other provision of law to the
28 contrary, the public service commission shall have the following

1 authority with respect to providers of interconnected voice over
2 Internet protocol service and their provision of such service:

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

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

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

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

11 (5) To hear and resolve complaints under sections 386.390
12 and 386.400, RSMo, regarding the payment or nonpayment for
13 exchange access services regardless of whether a user of exchange
14 access service has been certificated or registered by the
15 commission and regardless of whether the commission otherwise has
16 authority over such user. This subdivision shall not grant the
17 commission authority to review rates for exchange access services
18 that are set under section 392.245; and

19 (6) To revoke or suspend the registration of any provider
20 of interconnected voice over Internet protocol service who fails
21 to comply with the requirements of this section.

22 [319.036. Any person owning or leasing
23 agricultural property shall not be required to make
24 notice of excavation required by section 319.022 for
25 excavations on such property, if such excavation is not
26 in the proximity of an underground facility which is
27 marked with an aboveground placard or line marker and
28 is not in the proximity of a utility easement known to
29 that person. For purposes of this section
30 "agricultural property" means any property used to
31 produce an agricultural product as defined by section
32 348.400, RSMo, or defined as agricultural property by
33 that section.]
34

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

19 2. A noncompetitive or transitionally competitive
20 telecommunications company which seeks to file a tariff
21 classifying a telecommunications service as
22 transitionally competitive by operation of subsection 1
23 of section 392.370, shall apply to the commission for
24 an order finding that the transitionally competitive
25 classification is consistent with subsection 1 of
26 section 392.370. If such tariff does not otherwise
27 propose a new rate, rental or charge or new regulation
28 or practice affecting any rate, rental or charge, the
29 transitionally competitive classification shall become
30 effective ninety days after filing with the commission
31 and notice to public counsel and all telecommunications
32 companies unless the commission issues an order prior
33 to the effective date of such tariff, after notice and
34 hearing, upon its own motion or upon complaint by the
35 public counsel or a telecommunications company, which
36 finds that the transitionally competitive
37 classification is not consistent with subsection 1 of
38 section 392.370.]

39
40 [392.515. Notwithstanding the provisions of
41 sections 392.361, 392.370, 392.380, 392.400, 392.480,
42 392.490, 392.500, 392.510 and 392.520 to the contrary:

43 (1) Intrastate operator services provided by
44 alternative operator service companies shall be
45 provided pursuant to rates approved by the commission
46 under the provisions of subsection 2 of section
47 392.220, provided that proposed rates shall be presumed
48 reasonable by the commission and approved if they are
49 no higher than operator services rates of certificated
50 interexchange telecommunications companies which are
51 not alternative operator services companies;

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

17 (3) Notwithstanding the provisions of paragraph
18 (d) of subdivision (44) of section 386.020, RSMo, to
19 the contrary, no traffic aggregator shall deny a user
20 of intrastate operator services access to that user's
21 interexchange telecommunications company of choice
22 unless the commission, after hearing, orders otherwise
23 for good cause shown.]

24 Section B. The repeal and reenactment of sections 319.015,
25 319.022, 319.024, 319.025, 319.026, 319.030, 319.037, 319.041,
26 319.045, and 319.050, the enactment of sections 319.027, 319.029,
27 and 319.042, and the repeal of section 319.036 of this act shall
28 become effective on January 1, 2009.