

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1779
94TH GENERAL ASSEMBLY

4260S.09T

2008

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-nine new sections relating to utility service provision, with an effective date for certain sections.

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

Section A. Sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.030, 319.036,
2 319.037, 319.041, 319.045, 319.050, 386.020, 392.200, 392.220, 392.230, 392.245, 392.361,
3 392.370, 392.420, 392.450, 392.451, 392.480, 392.490, 392.510, 392.515, and 392.520, RSMo,
4 are repealed and twenty-nine new sections enacted in lieu thereof, to be known as sections
5 319.015, 319.016, 319.022, 319.024, 319.025, 319.026, 319.027, 319.029, 319.030, 319.037,
6 319.041, 319.042, 319.045, 319.050, 386.020, 386.572, 392.200, 392.220, 392.230, 392.245,
7 392.361, 392.370, 392.420, 392.450, 392.451, 392.480, 392.510, 392.520, and 392.550, to read
8 as follows:

319.015. For the purposes of sections 319.010 to 319.050, the following terms mean:
2 (1) "Approximate location", a strip of land not wider than the width of the underground
3 facility plus two feet on either side thereof. In situations where reinforced concrete, multiplicity
4 of adjacent facilities or other unusual specified conditions interfere with location attempts, the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

5 owner or operator shall designate to the best of his or her ability an approximate location of
6 greater width;

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

9 (3) **"Emergency", either:**

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

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

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

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

32 [(3)] (6) **"Marking", the use of [stakes,] paint, flags, stakes, or other clearly identifiable**
33 **materials to show the field location of underground facilities, or the area of proposed excavation,**
34 **in accordance with the color code standard of the American Public Works Association. Unless**
35 **otherwise provided by the American Public Works Association, the following color scheme shall**
36 **be used: blue for potable water; purple for reclaimed water, irrigation and slurry lines; green for**
37 **sewers and drain lines; red for electric, power lines, cables, conduit and lighting cables; orange**
38 **for communications, including telephone, cable television, alarm or signal lines, cable or**
39 **conduit; yellow for gas, oil, steam, petroleum or gaseous materials; white for proposed**

40 excavation; pink for temporary marking of construction project site features such as centerline
41 and top of slope and toe of slope;

42 [(4)] (7) "Notification center", a statewide organization operating twenty-four hours a
43 day, three hundred sixty-five days a year on a not-for-profit basis, supported by its participants,
44 or by more than one operator of underground facilities, having as its principal purpose the
45 statewide receipt and dissemination to participating owners and operators of underground
46 facilities of information concerning intended excavation activities in the area where such owners
47 and operators have underground facilities, and open to participation by any and all such owners
48 and operators on a fair and uniform basis. Such notification center shall be governed by a board
49 of directors elected by the membership and composed of representatives from each general
50 membership group, **provided that one of the board members shall be a representative of the**
51 **state highways and transportation commission so long as the commission is a participant**
52 **in the notification center;**

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

55 [(5)] (9) "Permitted project", a project for which a permit for the work to be performed
56 is required to be issued by a local, state or federal agency and, as a prerequisite to receiving such
57 permit, the applicant is required to [locate all underground facilities in the area of the work and
58 in the vicinity of the excavation and is required to notify each owner of such underground
59 facilities] **notify all underground facility owners in the area of the work for purposes of**
60 **identifying the location of existing underground facilities;**

61 [(6)] (10) "Person", any individual, firm, joint venture, partnership, corporation,
62 association, cooperative, municipality, political subdivision, governmental unit, department or
63 agency and shall include a notification center and any trustee, receiver, assignee or personal
64 representative thereof;

65 [(7)] (11) "Pipeline facility" includes, without limitation, new and existing pipe,
66 rights-of-way, and any equipment, facility, or building used or intended for use in the
67 transportation of gas or the treatment of gas, or used or intended for use in the transportation of
68 hazardous liquids including petroleum, or petroleum products;

69 [(8)] (12) "Preengineered project", a project which is approved by an agency or political
70 subdivision of the state and for which the agency or political subdivision responsible for the
71 project, as part of its engineering and contract procedures, holds a meeting prior to the
72 commencement of any construction work on such project and in such meeting all persons
73 determined by the agency or political subdivision to have underground facilities located within
74 the excavation area of the project are invited to attend and given an opportunity to verify or
75 inform any agency or political subdivision of the location of their underground facilities, if any,

76 within the excavation area and where the location of all known underground facilities are duly
77 located or noted on the engineering drawing as specifications for the project;

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

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

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

88 [(10)] **(15) "Underground facility", any item of personal property which shall be buried**
89 **or placed below ground for use in connection with the storage or conveyance of water, storm**
90 **drainage, sewage, telecommunications service, cable television service, electricity, oil, gas,**
91 **hazardous liquids or other substances, and shall include but not be limited to pipes, sewers,**
92 **conduits, cables, valves, lines, wires, manholes, attachments, or appurtenances, and those**
93 **portions of pylons or other supports below ground that are within any public or private street,**
94 **road or alley, right-of-way dedicated to the public use or utility easement of record, or**
95 **prescriptive easement[; except that where] . If gas distribution lines or electric lines,**
96 **telecommunications facilities, cable television facilities, water service lines, water system, storm**
97 **drainage or sewer system lines [are and such lines or facilities] , other than those used for**
98 **vehicular traffic control, lighting of streets and highways and communications for**
99 **emergency response, are located on private property and are owned solely by the owner or**
100 **owners of such private property, such lines or facilities receiving service shall not be considered**
101 **underground facilities for purposes of this chapter[; provided, however], except at locations**
102 **where they cross or lie within an easement or right-of-way dedicated to public use or**
103 **owned by a person other than the owner of the private property. Water and sanitary**
104 **sewer lines providing service to private property that are owned solely by the owner of**
105 **such property shall not be considered underground facilities at any location. Water, storm**
106 **drainage, cross road drainage, or sewer lines owned by the state highways and**
107 **transportation commission shall not be considered underground facilities at any location.**
108 For railroads regulated by the Federal Railroad Administration, "underground facility" as used
109 in sections 319.015 to 319.050 shall not include any excavating done by a railroad when such
110 excavating is done entirely on land which the railroad owns or on which the railroad operates,
111 or in the event of emergency, on adjacent land;

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

114 [(11)] **(17) "Working day", every day, except Saturday, Sunday or a legally declared**
115 **local, state or federal holiday.**

319.016. Notwithstanding any provision of sections 319.010 to 319.050 to the
2 **contrary, the state highways and transportation commission shall not be required to be a**
3 **notification center participant after December 31, 2011, but nothing in this section shall**
4 **prohibit the commission from voluntarily choosing to be a notification center participant**
5 **after that date.**

 319.022. 1. **Any person, except a railroad regulated by the Federal Railroad**
2 **Administration, who installs or otherwise owns or operates an underground facility shall**
3 **become a participant in a notification center upon first acquiring or owning or operating**
4 **such underground facility. Except as provided in section 319.016, all owners and operators**
5 **of underground facilities within the state shall maintain participation in a notification**
6 **center.**

7 **2.** All owners and operators of underground facilities which are located in a county of
8 the first classification or second classification within the state who are not members of a
9 notification center on August 28, 2001, shall become participants in the notification center prior
10 to January 1, 2003. Any person who installs or otherwise becomes an owner or operator of an
11 underground facility which is located within a county of the first classification or second
12 classification on or after January 1, 2003, shall become a participant in the notification center
13 within thirty days of acquiring or operating such underground facility. Beginning January 1,
14 2003, all owners and operators of underground facilities which are located in a county of the first
15 classification or second classification within the state shall maintain participation in the
16 notification center **except as provided otherwise in section 319.016.**

17 [2.] **3.** All owners and operators of underground facilities which are located in a county
18 of the third classification or fourth classification within the state who are not members of a
19 notification center on August 28, 2001, shall become participants in the notification center prior
20 to January 1, 2005. Any person who installs or otherwise becomes an owner or operator of an
21 underground facility which is located within a county of the third classification or fourth
22 classification on or after January 1, 2005, shall become a participant in the notification center
23 within thirty days of acquiring or operating such underground facility. Beginning January 1,
24 2005, all owners and operators of underground facilities which are located in a county of the
25 third classification or fourth classification within the state shall maintain participation in the
26 notification center **except as provided otherwise in section 319.016.**

27 [3.] **4.** The notification center shall maintain in its offices and make available to any
28 [person] **notification center participant or excavator** upon request, a current list of the names
29 and addresses of each [owner and operator participating in the] notification center **participant**,
30 including the county or counties wherein each [owner or operator] **participant** has underground
31 facilities. The notification center may charge a reasonable fee to [persons] **notification center**
32 **participants or excavators** requesting such list as is necessary to recover the actual costs of
33 printing and mailing.

34 [4.] **5.** Excavators shall be informed of the availability of the list of **notification center**
35 participants [in the notification center] required in subsection [2] **3** of this section in the manner
36 provided for in section 319.024.

37 [5.] **6.** An annual audit or review of the notification center shall be performed by a
38 certified public accountant and a report of the findings submitted to the speaker of the house of
39 representatives and the president pro tem of the senate.

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

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

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

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

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

319.025. 1. Except as provided in [sections] **subsection 3 of section 319.030 and in**
2 **section 319.050**, a person shall not make or begin any excavation in any public street, road or
3 alley, right-of-way dedicated to the public use or utility easement of record or within any private
4 street or private property without first giving notice to **the notification center** and obtaining
5 information concerning the possible location of any underground facilities which may be affected
6 by said excavation from [each and every owner and operator of underground facilities]
7 **underground facility owners** whose [name appears] **names appear** on the current list of
8 participants in the notification center **and who were communicated to the excavator as**
9 **notification center participants who would be informed of the excavation notice**. Prior to
10 January 1, 2003, a person shall not make or begin any excavation pursuant to this subsection
11 without also making notice to owners or operators of underground facilities which do not
12 participate in a notification center and whose name appears on the current list of the recorder of
13 deeds in and for the county in which the excavation is to occur. Beginning January 1, 2003,
14 notice to the notification center of proposed excavation shall be deemed notice to all owners and
15 operators of underground facilities. The notice referred to in this section shall comply with the
16 provisions of section 319.026. **As part of the process to request the locating of underground**
17 **facilities and having them properly marked, the notification center shall ask excavators to**
18 **identify whether or not the proposed excavation will be on a public right-of-way or**
19 **easement dedicated to public use for vehicular traffic.**

20 2. An excavator's notice to owners and operators of underground facilities participating
21 in the notification center pursuant to section 319.022 is ineffective for purposes of subsection
22 1 of this section unless given to such notification center. Prior to January 1, 2003, the notice
23 required by subsection 1 of this section shall be given directly to owners or operators of
24 underground facilities who are not represented by a notification center.

25 3. [If the excavator is engaged in trenching, ditching, drilling, well-drilling or -driving,
26 augering or boring and, if upon notification by the excavator pursuant to section 319.026, the
27 owner or operator notifies the excavator that the area of excavation cannot be determined from
28 the description provided by the excavator, the excavator shall mark the proposed area of
29 excavation prior to marking of location by the owner or operator of the facility. For any

30 excavation, as defined in section 319.015,] **Notification center participants shall be relieved**
31 **of the responsibility to respond to a notice of intent to excavate received directly from the**
32 **person intending to commence an excavation, except for requests for clarification of**
33 **markings through on-site meetings as provided in subsection 1 of section 319.030 and**
34 **requests for locations at the time of an emergency as provided by section 319.050.**

35 **4.** If the owner or operator notifies the excavator that the area of excavation cannot be
36 determined from the description provided by the excavator through the notice required by this
37 section, [the owner or operator may require] the excavator [to provide] **shall provide**
38 **clarification of the area of excavation by markings or by providing** project plans to the
39 owner or operator, or [meet] **by meeting** on the site of the excavation with representatives of the
40 owner or operator as provided by subsection 1 of section 319.030. [The provisions of this
41 subsection shall not apply to owners of residential property performing excavations on their own
42 property.]

43 **5. Notwithstanding the provisions of this section to the contrary, a person shall not**
44 **make or begin any excavation in any state highway, or on the right-of-way of any state**
45 **highway, without first obtaining a permit from the state highways and transportation**
46 **commission pursuant to section 227.240, RSMo, provided however, the provisions of this**
47 **subsection shall not apply to railroad right of way owned or operated by a railroad.**

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

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

16 **(1)** The name[, address] and telephone number [and facsimile number, if any,] of the
17 person filing the notice of [intent,] **excavation, if the telephone number is different than that**

18 **of the excavator, and** the name, address [and] , telephone number of the excavator[,] **and**
19 **whether the excavator's telephone is equipped with a recording device;**

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

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

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

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

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

43 (7) A description of the location or locations of the excavation at the site described by
44 direction and approximate distance in relation to prominent features of the site, such as existing
45 buildings or roadways[. For excavations occurring outside the limits of an incorporated city, the
46 following additional information shall be provided: the location of the excavation in relation to
47 the nearest numbered, lettered or named state or county road which is posted on a road sign,
48 including the approximate distance from the nearest intersection or prominent landmark; and,
49 if the excavation is not on or near a posted numbered, lettered or named state or county road,]
50 ;

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

54 **3.** The notification center receiving such notice shall solicit all information required [in
55 this] **by subsection 2 of this section** and shall require the excavator to provide all such
56 information before notice by the excavator is deemed to be completed pursuant to sections
57 319.015 to 319.050. The notification center shall transmit all details of such notice as required
58 [in subsection 1 of] **by this section.**

59 [3.] **4.** A [written] record of each notice of intent to excavate shall be maintained by the
60 notification center or, prior to January 1, 2003, by the nonmember owner or operator receiving
61 direct notifications for a period of five years. The record shall include the date the notice was
62 received and all information required by subsection 2 of this section which was provided by the
63 excavator **and a record of the underground facility owners notified by the notification**
64 **center.** If the [recipient] **notification center** creates a record of the notice by [computer or]
65 telephonic recording, such record of the original notice shall be maintained for one year from the
66 date of receipt. **Records of notices to excavate maintained by the notification center in**
67 **electronic form shall be deemed to be records under this subsection.** Persons holding
68 records of notices of intent to excavate and records of information provided to the excavator by
69 the notification center or owner or operator of the facility, shall make copies of such records
70 available for a reasonable copying fee upon the request of the owner or operator of the
71 underground facilities or the excavator filing the notice.

72 [4.] **5.** If in the course of excavation the person responsible for the excavation operations
73 discovers that the owner or operator of the underground facility who is a participant in a
74 notification center has incorrectly located the underground facility, he or she shall notify the
75 notification center which shall inform the [participating owner or operator] **notification center**
76 **participant.** If the owner or operator of the underground facility is not a participant in a
77 notification center prior to the January 1, 2003, effective date for mandatory participation
78 pursuant to section 319.022, the person responsible for the excavation shall notify the owner.
79 The person responsible for maintaining records of the location of underground facilities for the
80 [owner or operator] **notification center participant** shall correct such records to show the actual
81 location of such facilities, if current records are incorrect.

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

85 **6.** When markings have been provided in response to a notice of intent to excavate,
86 excavators may **commence or** continue to work within the area described in the notice **for** so
87 long as the markings are visible. If markings become unusable due to weather, construction or
88 other cause, the excavator shall contact the notification center to request remarking. Such notice
89 shall be given in the same manner as original notice of intent to excavate, and the owner or

90 operator shall remark the site in the same manner, within the same time, as required in response
91 to an original notice of intent to excavate. Each excavator shall exercise reasonable care not to
92 unnecessarily disturb or obliterate markings provided for location of underground facilities. If
93 remarking is required due to the excavator's failure to exercise reasonable care, or if repeated
94 unnecessary requests for remarking are made by an excavator even though the markings are
95 visible and usable, the excavator may be liable to the owner or operator for the reasonable cost
96 of such remarking.

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

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

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

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

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

319.030. 1. Every person owning or operating an underground facility to whom notice of intent to excavate is required to be given shall, upon receipt of such notice as provided in this section from a person intending to commence an excavation, inform the excavator as promptly

4 as practical, but not in excess of two working days [from receipt of the notice], unless otherwise
5 mutually agreed, of the approximate location of underground facilities in or near the area of the
6 excavation so as to enable the person engaged in the excavation work to locate the facilities in
7 advance of and during the excavation work. **The two working days provided for notice in this**
8 **subsection and subsection 1 of section 319.026, shall begin at 12:00 a.m. following the**
9 **receipt of the request by the notification center.** If the information available to the owner or
10 operator of a pipeline facility or an underground electric or communications cable discloses that
11 valves, vaults or other appurtenances are located in or near the area of excavation, the owner or
12 operator shall either inform the excavator of the approximate location of such appurtenances at
13 the same time and in the same manner as the approximate location of the remainder of the
14 facility is provided, or shall at such time inform the excavator that appurtenances exist in the area
15 and provide a telephone number through which the excavator may contact a representative of the
16 owner or operator who will meet at the site within one working day after request from the
17 excavator and at such meeting furnish the excavator with the available information about the
18 location and nature of such appurtenances. If the excavator states in the notice of intent to
19 excavate that the excavation will involve [tunneling or horizontal boring] **trenchless technology**,
20 the owner or operator shall inform the excavator of the depth, to the best of his or her knowledge
21 or ability, of the facility according to the records of the owner or operator. The owner or operator
22 shall provide the approximate location of underground facilities by use of markings. **If flags or**
23 **stakes are used, [staking] such marking** shall be consistent with the color code and other
24 standards for ground markings. Persons representing the excavator and the owner or operator
25 shall meet on the site of excavation within two working days of a request by either person for
26 such meeting for the purpose of clarifying markings, or upon agreement of the excavator and
27 owner or operator, such meeting may be an alternate means of providing the location of facilities
28 by originally marking the approximate location of the facility at the time of the meeting. If upon
29 receipt of a notice of intent to excavate, an owner or operator determines that he or she neither
30 owns or operates underground facilities in or near the area of excavation, the owner or operator
31 shall within two working days after receipt of the notice, inform the excavator that the owner or
32 operator has no facilities located in the area of the proposed excavation. [If the notice of intent
33 to excavate provided to the owner or operator of the underground facility by the notification
34 center states that a person is available at the telephone number given in the notice between 8:00
35 a.m. and 5:00 p.m. on each working day or that the excavator's telephone is equipped with a
36 recording device, or states a facsimile number for the excavator, the owner or operator shall
37 make actual notice of no facilities in the area of the excavation described in the notice by one or
38 more of the following methods: calling the telephone number given between 8:00 a.m. and 5:00
39 p.m. on a working day; leaving a message on the excavator's recording device; transmitting a

40 facsimile message to the excavator; marking "no facilities" or "clear" at the site of excavation;
41 or verbally informing the excavator at the site of excavation. If the notice of intent to excavate
42 provided to the owner or operator does not indicate that a person is available at the telephone
43 number given in the notice between 8:00 a.m. and 5:00 p.m. on each working day or that the
44 excavator's telephone is equipped with a recording device or that a facsimile number is provided
45 for receiving facsimile messages, then the owner or operator may attempt to notify the excavator
46 of no facilities in the area of excavation by any of the methods indicated above; however, two
47 documented attempts by the owner or operator to reach such an excavator by telephone shall
48 constitute compliance with this subsection.] **The owner or operator of the underground**
49 **facility shall make notice to the excavator that no facilities are located in the area of**
50 **excavation by contacting the excavator by any of the following methods:**

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

54 (2) **By leaving a message on the recording device for such numbers;**

55 (3) **By calling the cellular telephone number of the excavator or responsible person;**

56 (4) **By notifying the excavator by facsimile or electronic mail at numbers or**
57 **addresses stated by the excavator in the notice of excavation made under subsection 2 of**
58 **section 319.026;**

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

60 (6) **By verbally informing the excavator in person.**

61

62 **If the only means of contacting the excavator is one or more telephone numbers provided**
63 **by the excavator in the notice of excavation under section 319.026, then two attempts by**
64 **the underground facility owner to contact the excavator at one of the telephone numbers**
65 **provided shall constitute compliance with this subsection.**

66 **2.** A record of the date and means of informing the excavator that no facilities were
67 located by the owner or operator shall be included in the written records [required by subsection
68 3 of section 319.026] **of the underground facility owner regarding each specific notice of**
69 **excavation.**

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

76 3. In the event that a person owning or operating an underground facility fails to comply
77 with the provisions of subsection 1 of this section after notice given by an excavator in
78 compliance with section 319.026, the excavator, prior to commencing the excavation, shall give
79 a second notice to the [same entity to whom the original notice was made] **notification center**
80 as required by section 319.026 **stating that there has been no response to the original notice**
81 **given under section 319.026.** [If,] After the receipt of the [second] notice **stating there has**
82 **been "no response",** the owner or operator of an underground facility [fails to provide the
83 excavator with location information during the next working day] **shall, within two hours of**
84 **the receipt of such notice, mark its facilities or contact and inform the excavator of when**
85 **the facilities will be marked; provided, however, that for "no response" notices made to**
86 **the notification center by 2:00 p.m., the markings shall be completed on the working day**
87 **the notice is made to the notification center, and provided that for "no response" notices**
88 **made to the notification center after 2:00 p.m., the markings shall be completed no later**
89 **than 10:00 a.m. on the next working day. If an underground facility owner fails to mark**
90 **its facilities or contact the excavator as required by this subsection,** the excavator may
91 commence the excavation. Nothing in this subsection shall excuse the excavator from exercising
92 the degree of care in making the excavation as is otherwise required by law.

93 4. For purposes of this section, a period of two working days begins [upon receipt of the
94 excavator's notice of intent to excavate or upon receipt of a request for a meeting and shall end
95 on the second working day thereafter at the same time of day. If the excavator's notice of intent
96 to excavate or a request for a meeting is received on a working day before 8:00 a.m., such period
97 of time shall begin at 8:00 a.m. of that day. If the excavator's notice of intent to excavate or a
98 request for a meeting is received after 5:00 p.m. on a working day, or at any time on a day that
99 is not a working day, then such period of time shall begin at 8:00 a.m. of the first working day
100 after the day of actual receipt] **at 12:00 a.m. following when the request is made.**

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

7 2. The excavator shall not use power-driven equipment for [horizontal boring]
8 **trenchless excavation**, including directional drilling, within the marked approximate location
9 of such underground facilities until the excavator has made careful and prudent efforts to confirm
10 the horizontal and vertical location thereof in the vicinity of the proposed excavation through
11 methods appropriate to the geologic and weather conditions, and the nature of the facility, such

12 as the use of electronic locating devices, hand digging, pot holing when practical, soft digging,
13 vacuum methods, use of pressurized air or water, pneumatic hand tools or other noninvasive
14 methods as such methods are developed. Such methods of confirming location shall not violate
15 established safety practices. Nothing in this subsection shall authorize any person other than the
16 owner or operator of a facility to attach an electronic locating device to any underground facility.
17 For excavations paralleling the underground facility, such efforts to confirm the location of the
18 facility shall be made at careful and prudent intervals. The excavator shall also make careful and
19 prudent efforts by such means as are appropriate to the geologic and weather conditions and the
20 nature of the facility, to confirm the horizontal and vertical location of the boring device during
21 boring operations. Notwithstanding the foregoing, the excavator shall not be required to confirm
22 the horizontal or vertical location of the underground facilities if the excavator, using the
23 methods described in this section, excavates a hole over the underground facilities to a depth two
24 feet or more below the planned boring path and then carefully and prudently monitors the
25 horizontal and vertical location of the boring device in a manner calculated to enable the device
26 to be visually observed by the excavator as it crosses the entire width of the marked approximate
27 location of the underground facilities.

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

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

319.045. 1. In the event of any damage or dislocation or disturbance of any underground
2 facility in connection with any excavation, the person responsible for the excavation operations
3 shall immediately notify the notification center [and the owner or operator of the facility or the
4 owner or operator, if known, if it is not a participant in the notification center prior to January
5 1, 2003. On or after January 1, 2003, the responsible party shall notify the notification center
6 only]. **This subsection shall be deemed to require reporting of any damage, dislocation,**

7 **or disturbance to trace wires, encasements, cathode protection, permanent above-ground**
8 **stakes or other such items utilized for protection of the underground facility.**

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

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

32 4. The attorney general may bring an action in any appropriate circuit court of this state
33 for equitable relief to redress or restrain a violation by any person of any provision of sections
34 319.010 to 319.050. The court may grant such relief as is necessary or appropriate, including
35 mandatory or prohibitive injunctive relief, temporary or permanent.

319.050. The provisions of sections 319.025 and 319.026 shall not apply to any [utility
2 which is repairing or replacing any of its facilities due to damage caused during an unexpected
3 occurrence or when making an excavation at times of emergency resulting from a sudden,
4 unexpected occurrence, and presenting a clear and imminent danger demanding immediate action
5 to prevent or mitigate loss or damage to life, health, property or essential public services.
6 "Unexpected occurrence" includes, but is not limited to, thunderstorms, high winds, ice or snow
7 storms, fires, floods, earthquakes, or other soil or geologic movements, riots, accidents, water

8 pipe breaks, vandalism or sabotage which cause damage to surface or subsurface facilities
9 requiring immediate repair] **excavation when necessary due to an emergency as defined in**
10 **section 319.015.** An [excavator or utility] **excavation** may proceed regarding such emergency,
11 provided all reasonable precautions have been taken to protect the underground facilities. In any
12 such case, the excavator [or utility] shall give notification, substantially in compliance with
13 section 319.026, as soon as practical, and upon being notified that an emergency exists, each
14 [owner and operator of an] underground facility **owner** in the area shall [immediately provide
15 all location information reasonably available to any excavator who requests the same] , **within**
16 **two hours after receiving such notice, provide markings or contact the excavator with any**
17 **information immediately available to assist the excavator and shall inform the excavator**
18 **if not able to mark within the two hours of when the underground facility will be marked**
19 **at the site of the emergency. The excavator may be liable to the owner or operator for costs**
20 **directly associated with the locating of any such underground facility relating to a**
21 **notification of an emergency that does not meet the definition of "emergency" as stated in**
22 **section 319.015.**

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

- 2 (1) "Alternative local exchange telecommunications company", a local exchange
3 telecommunications company certified by the commission to provide basic or nonbasic local
4 telecommunications service or switched exchange access service, or any combination of such
5 services, in a specific geographic area subsequent to December 31, 1995;
- 6 (2) "Alternative operator services company", any certificated interexchange
7 telecommunications company which receives more than forty percent of its annual Missouri
8 intrastate telecommunications service revenues from the provision of operator services pursuant
9 to operator services contracts with traffic aggregators;
- 10 (3) "Basic interexchange telecommunications service" includes, at a minimum, two-way
11 switched voice service between points in different local calling scopes as determined by the
12 commission and shall include other services as determined by the commission by rule upon
13 periodic review and update;
- 14 (4) "Basic local telecommunications service", two-way switched voice service within
15 a local calling scope as determined by the commission comprised of any of the following
16 services and their recurring and nonrecurring charges:
 - 17 (a) Multiparty, single line, including installation, touchtone dialing, and any applicable
18 mileage or zone charges;
 - 19 (b) Assistance programs for installation of, or access to, basic local telecommunications
20 services for qualifying economically disadvantaged or disabled customers or both, including, but

21 not limited to, lifeline services and link-up Missouri services for low-income customers or
22 dual-party relay service for the hearing impaired and speech impaired;

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

25 (d) Access to basic local operator services;

26 (e) Access to basic local directory assistance;

27 (f) Standard intercept service;

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

30 (h) One standard white pages directory listing.
31

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

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

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

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

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

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

47 (10) "Competitive telecommunications service", a telecommunications service which
48 has been classified as such by the commission pursuant to section 392.245, RSMo, or to section
49 392.361, RSMo, or which has become a competitive telecommunications service pursuant to
50 section 392.370, RSMo;

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

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

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

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

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

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

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

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

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

71 (15) "Electrical corporation" includes every corporation, company, association, joint
72 stock company or association, partnership and person, their lessees, trustees or receivers
73 appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation
74 generating electricity solely for railroad, light rail or street railroad purposes or for the use of its
75 tenants and not for sale to others, owning, operating, controlling or managing any electric plant
76 except where electricity is generated or distributed by the producer solely on or through private
77 property for railroad, light rail or street railroad purposes or for its own use or the use of its
78 tenants and not for sale to others;

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

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

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

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

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

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

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

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

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

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

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

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

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

119 [(24)] (25) "Interexchange telecommunications service", telecommunications service
120 between points in two or more exchanges;

121 [(25)] (26) "InterLATA", interexchange telecommunications service between points in
122 different local access and transportation areas;

123 [(26)] (27) "IntraLATA", interexchange telecommunications service between points
124 within the same local access and transportation area;

125 [(27)] (28) "Light rail" includes every rail transportation system in which one or more
126 rail vehicles are propelled electrically by overhead catenary wire upon tracks located

127 substantially within an urban area and are operated exclusively in the transportation of
128 passengers and their baggage, and including all bridges, tunnels, equipment, switches, spurs,
129 tracks, stations, used in connection with the operation of light rail;

130 [(28)] **(29)** "Line" includes route;

131 [(29)] **(30)** "Local access and transportation area" or "LATA", contiguous geographic
132 area approved by the U.S. District Court for the District of Columbia in *United States v. Western*
133 *Electric*, Civil Action No. 82-0192 that defines the permissible areas of operations for the Bell
134 Operating companies;

135 [(30)] **(31)** "Local exchange telecommunications company", any company engaged in
136 the provision of local exchange telecommunications service. A local exchange
137 telecommunications company shall be considered a "large local exchange telecommunications
138 company" if it has at least one hundred thousand access lines in Missouri and a "small local
139 exchange telecommunications company" if it has less than one hundred thousand access lines
140 in Missouri;

141 [(31)] **(32)** "Local exchange telecommunications service", telecommunications service
142 between points within an exchange;

143 [(32)] **(33)** "Long-run incremental cost", the change in total costs of the company of
144 producing an increment of output in the long run when the company uses least cost technology,
145 and excluding any costs that, in the long run, are not brought into existence as a direct result of
146 the increment of output. The relevant increment of output shall be the level of output necessary
147 to satisfy total current demand levels for the service in question, or, for new services, demand
148 levels that can be demonstrably anticipated;

149 [(33)] **(34)** "Municipality" includes a city, village or town;

150 [(34)] **(35)** "Nonbasic telecommunications services" shall be all regulated
151 telecommunications services other than basic local and exchange access telecommunications
152 services, and shall include the services identified in paragraphs (d) and (e) of subdivision (4) of
153 this section. Any retail telecommunications service offered for the first time after August 28,
154 1996, shall be classified as a nonbasic telecommunications service, including any new service
155 which does not replace an existing service;

156 [(35)] **(36)** "Noncompetitive telecommunications company", a telecommunications
157 company other than a competitive telecommunications company or a transitionally competitive
158 telecommunications company;

159 [(36)] **(37)** "Noncompetitive telecommunications service", a telecommunications service
160 other than a competitive or transitionally competitive telecommunications service;

161 [(37)] **(38)** "Operator services", operator-assisted interexchange telecommunications
162 service by means of either human or automated call intervention and includes, but is not limited

163 to, billing or completion of calling card, collect, person-to-person, station-to-station or third
164 number billed calls;

165 [(38)] **(39)** "Operator services contract", any agreement between a traffic aggregator and
166 a certificated interexchange telecommunications company to provide operator services at a traffic
167 aggregator location;

168 [(39)] **(40)** "Person" includes an individual, and a firm or copartnership;

169 [(40)] **(41)** "Private shared tenant services" includes the provision of telecommunications
170 and information management services and equipment within a user group located in discrete
171 private premises as authorized by the commission by a commercial-shared services provider or
172 by a user association, through privately owned customer premises equipment and associated data
173 processing and information management services and includes the provision of connections to
174 the facilities of local exchange telecommunications companies and to interexchange
175 telecommunications companies;

176 [(41)] **(42)** "Private telecommunications system", a telecommunications system
177 controlled by a person or corporation for the sole and exclusive use of such person, corporation
178 or legal or corporate affiliate thereof;

179 [(42)] **(43)** "Public utility" includes every pipeline corporation, gas corporation, electrical
180 corporation, telecommunications company, water corporation, heat or refrigerating corporation,
181 and sewer corporation, as these terms are defined in this section, and each thereof is hereby
182 declared to be a public utility and to be subject to the jurisdiction, control and regulation of the
183 commission and to the provisions of this chapter;

184 [(43)] **(44)** "Railroad" includes every railroad and railway, other than street railroad or
185 light rail, by whatsoever power operated for public use in the conveyance of persons or property
186 for compensation, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations,
187 real estate and terminal facilities of every kind used, operated, controlled or owned by or in
188 connection with any such railroad;

189 [(44)] **(45)** "Railroad corporation" includes every corporation, company, association,
190 joint stock company or association, partnership and person, their lessees, trustees or receivers
191 appointed by any court whatsoever, owning, holding, operating, controlling or managing any
192 railroad or railway as defined in this section, or any cars or other equipment used thereon or in
193 connection therewith;

194 [(45)] **(46)** "Rate", every individual or joint rate, fare, toll, charge, reconsigning charge,
195 switching charge, rental or other compensation of any corporation, person or public utility, or any
196 two or more such individual or joint rates, fares, tolls, charges, reconsigning charges, switching
197 charges, rentals or other compensations of any corporation, person or public utility or any
198 schedule or tariff thereof;

199 [(46)] **(47)** "Resale of telecommunications service", the offering or providing of
200 telecommunications service primarily through the use of services or facilities owned or provided
201 by a separate telecommunications company, but does not include the offering or providing of
202 private shared tenant services;

203 [(47)] **(48)** "Service" includes not only the use and accommodations afforded consumers
204 or patrons, but also any product or commodity furnished by any corporation, person or public
205 utility and the plant, equipment, apparatus, appliances, property and facilities employed by any
206 corporation, person or public utility in performing any service or in furnishing any product or
207 commodity and devoted to the public purposes of such corporation, person or public utility, and
208 to the use and accommodation of consumers or patrons;

209 [(48)] **(49)** "Sewer corporation" includes every corporation, company, association, joint
210 stock company or association, partnership or person, their lessees, trustees or receivers appointed
211 by any court, owning, operating, controlling or managing any sewer system, plant or property,
212 for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain,
213 except that the term shall not include sewer systems with fewer than twenty-five outlets;

214 [(49)] **(50)** "Sewer system" includes all pipes, pumps, canals, lagoons, plants, structures
215 and appliances, and all other real estate, fixtures and personal property, owned, operated,
216 controlled or managed in connection with or to facilitate the collection, carriage, treatment and
217 disposal of sewage for municipal, domestic or other beneficial or necessary purpose;

218 [(50)] **(51)** "Street railroad" includes every railroad by whatsoever type of power
219 operated, and all extensions and branches thereof and supplementary facilities thereto by
220 whatsoever type of vehicle operated, for public use in the conveyance of persons or property for
221 compensation, mainly providing local transportation service upon the streets, highways and
222 public places in a municipality, or in and adjacent to a municipality, and including all cars, buses
223 and other rolling stock, equipment, switches, spurs, tracks, poles, wires, conduits, cables,
224 subways, tunnels, stations, terminals and real estate of every kind used, operated or owned in
225 connection therewith but this term shall not include light rail as defined in this section; and the
226 term "street railroad" when used in this chapter shall also include all motor bus and trolley bus
227 lines and routes and similar local transportation facilities, and the rolling stock and other
228 equipment thereof and the appurtenances thereto, when operated as a part of a street railroad or
229 trolley bus local transportation system, or in conjunction therewith or supplementary thereto, but
230 such term shall not include a railroad constituting or used as part of a trunk line railroad system
231 and any street railroad as defined above which shall be converted wholly to motor bus operation
232 shall nevertheless continue to be included within the term "street railroad" as used herein;

233 [(51)] **(52)** "Telecommunications company" includes telephone corporations as that term
234 is used in the statutes of this state and every corporation, company, association, joint stock

235 company or association, partnership and person, their lessees, trustees or receivers appointed by
236 any court whatsoever, owning, operating, controlling or managing any facilities used to provide
237 telecommunications service for hire, sale or resale within this state;

238 [(52)] **(53)** "Telecommunications facilities" includes lines, conduits, ducts, poles, wires,
239 cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices, real
240 estate, easements, apparatus, property and routes used, operated, controlled or owned by any
241 telecommunications company to facilitate the provision of telecommunications service;

242 [(53)] **(54)** "Telecommunications service", the transmission of information by wire,
243 radio, optical cable, electronic impulses, or other similar means. As used in this definition,
244 "information" means knowledge or intelligence represented by any form of writing, signs,
245 signals, pictures, sounds, or any other symbols. Telecommunications service does not include:

246 (a) The rent, sale, lease, or exchange for other value received of customer premises
247 equipment except for customer premises equipment owned by a telephone company certificated
248 or otherwise authorized to provide telephone service prior to September 28, 1987, and provided
249 under tariff or in inventory on January 1, 1983, which must be detariffed no later than December
250 31, 1987, and thereafter the provision of which shall not be a telecommunications service, and
251 except for customer premises equipment owned or provided by a telecommunications company
252 and used for answering 911 or emergency calls;

253 (b) Answering services and paging services;

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

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

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

262 (f) Cable television service;

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

264 (h) Electronic publishing services; [or]

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

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

268 [(54)] **(55)** "Telephone cooperative", every corporation defined as a telecommunications
269 company in this section, in which at least ninety percent of those persons and corporations
270 subscribing to receive local telecommunications service from the corporation own at least ninety

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

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

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

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

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

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

386.572. 1. No corporation, person, public utility, or municipality that owns any gas plant shall violate any law or any order, decision, decree, rule, direction, demand, or requirement of the commission or any part or portion thereof relating to federally mandated natural gas safety standards. Notwithstanding the above, a municipality that owns any gas plant shall be subject to the provisions of this section only for violations of natural gas safety laws, rules, or orders.

2. The maximum penalties for violations of federally mandated natural gas safety standards, or such stricter natural gas safety standards or rules as may be approved by the commission, shall not be greater than fifteen thousand dollars for each violation with a maximum penalty for a continuing violation or a multiple series of violations of the same standard or rule provision not to exceed one hundred fifty thousand dollars, notwithstanding any provisions of subsection 1 of section 386.570 to the contrary. The

13 **maximum penalty for each violation shall increase to twenty thousand dollars, effective**
14 **January 1, 2015, twenty-five thousand dollars, effective January 1, 2025, thirty thousand**
15 **dollars, effective January 1, 2035, and forty thousand dollars, effective January 1, 2040.**
16 **The maximum penalty for a continuing violation or a multiple series of violations of the**
17 **same standard or rule provision shall increase to two hundred thousand dollars, effective**
18 **January 1, 2015, two hundred fifty thousand dollars, effective January 1, 2025, three**
19 **hundred thousand dollars, effective January 1, 2035, and four hundred thousand dollars,**
20 **effective January 1, 2040. In determining the amount of the penalty, the commission shall**
21 **consider the nature, circumstances, and gravity of the violation, and also shall consider,**
22 **with respect to the entity found to have committed the violation:**

- 23 **(1) The degree of culpability;**
- 24 **(2) Any history of prior violations;**
- 25 **(3) The effect of the penalty on the entity's ability to continue operation;**
- 26 **(4) Any good faith effort in attempting to achieve compliance;**
- 27 **(5) Ability to pay the penalty; and**
- 28 **(6) Such other matters as are relevant in the case.**

29 **3. Every violation of a specific natural gas safety standard or rule by any**
30 **corporation, person, public utility, or municipality that owns any gas plant is a separate**
31 **and distinct offense, regardless of whether such violations relate to the same incident. In**
32 **case of a continuing violation, each day's continuance thereof shall be a separate and**
33 **distinct offense.**

34 **4. In construing and enforcing the provisions of this section, the act, omission, or**
35 **failure of any officer, agent, or employee of any corporation, person, public utility, or**
36 **municipality that owns any gas plant acting within the scope of official duties of**
37 **employment shall in every case be considered the act, omission, or failure of such**
38 **corporation, person, public utility, or municipality that owns any gas plant.**

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

9 2. No telecommunications company shall directly or indirectly or by any special rate,
10 rebate, drawback or other device or method charge, demand, collect or receive from any person

11 or corporation a greater or less compensation for any service rendered or to be rendered with
12 respect to telecommunications or in connection therewith, except as authorized in this chapter,
13 than it charges, demands, collects or receives from any other person or corporation for doing a
14 like and contemporaneous service with respect to telecommunications under the same or
15 substantially the same circumstances and conditions. Promotional programs for
16 telecommunications services may be offered by telecommunications companies for periods of
17 time so long as the offer is otherwise consistent with the provisions of this chapter and approved
18 by the commission. Neither this subsection nor subsection 3 of this section shall be construed
19 to prohibit an economy rate telephone service offering. This section and section 392.220 to the
20 contrary notwithstanding, the commission is authorized to approve tariffs filed by local exchange
21 telecommunications companies which elect to provide reduced charges for residential
22 telecommunications connection services pursuant to the lifeline connection assistance plan as
23 promulgated by the federal communications commission. Eligible subscribers for such
24 connection services shall be those as defined by participating local exchange telecommunications
25 company tariffs.

26 3. No telecommunications company shall make or give any undue or unreasonable
27 preference or advantage to any person, corporation or locality, or subject any particular person,
28 corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect
29 whatsoever except that telecommunications messages may be classified into such classes as are
30 just and reasonable, and different rates may be charged for the different classes of messages.

31 4. (1) No telecommunications company may define a telecommunications service as a
32 different telecommunications service based on the geographic area or other market segmentation
33 within which such telecommunications service is offered or provided, unless the
34 telecommunications company makes application and files a tariff or tariffs which propose relief
35 from this subsection. Any such tariff shall be subject to the provisions of sections 392.220 and
36 392.230 and in any hearing thereon the burden shall be on the telecommunications company to
37 show, by clear and convincing evidence, that the definition of such service based on the
38 geographic area or other market within which such service is offered is reasonably necessary to
39 promote the public interest and the purposes and policies of this chapter.

40 (2) It is the intent of this act to bring the benefits of competition to all customers and to
41 ensure that incumbent and alternative local exchange telecommunications companies have the
42 opportunity to price and market telecommunications services to all prospective customers in any
43 geographic area in which they compete. To promote the goals of the federal
44 Telecommunications Act of 1996, **for an alternative local exchange telecommunications**
45 **company or** for an incumbent local exchange telecommunications company in any exchange
46 where an **incumbent local exchange telecommunications company has been classified**

47 **competitive under sections 392.245 and 392.361, an** alternative local exchange
48 telecommunications company has been certified and is providing basic local telecommunications
49 services or switched exchange access services, or [for an alternative local exchange
50 telecommunications company] **an interconnected voice over Internet protocol service**
51 **provider has been registered and is providing local voice service,** the commission shall
52 review and approve or reject, within forty-five days of filing, tariffs for proposed different
53 services as follows:

54 (a) For services proposed on an exchange-wide basis, it shall be presumed that a tariff
55 which defines and establishes prices for a local exchange telecommunications service or
56 exchange access service as a different telecommunications service in the geographic area, no
57 smaller than an exchange, within which such local exchange telecommunications service or
58 exchange access service is offered is reasonably necessary to promote the public interest and the
59 purposes and policies of this chapter;

60 (b) For services proposed in a geographic area smaller than an exchange or other market
61 segmentation within which or to whom such telecommunications service is proposed to be
62 offered, a local exchange telecommunications company may petition the commission to define
63 and establish a local exchange telecommunications service or exchange access service as a
64 different local exchange telecommunications service or exchange access service. The
65 commission shall approve such a proposal unless it finds that such service in a smaller
66 geographic area or such other market segmentation is contrary to the public interest or is contrary
67 to the purposes of this chapter. Upon approval of such a smaller geographic area or such other
68 market segmentation for a different service for one local exchange telecommunications company,
69 all other local exchange telecommunications companies certified to provide service in that
70 exchange may file a tariff to use such smaller geographic area or such other market segmentation
71 to provide that service;

72 (c) For proposed different services described in paragraphs (a) and (b) of this
73 subdivision, the local exchange telecommunications company which files a tariff to provide such
74 service shall provide the service to all similarly situated customers, upon request in accordance
75 with that company's approved tariff, in the exchange or geographic area smaller than an exchange
76 or such other market segmentation for which the tariff was filed, and no price proposed for such
77 service by an incumbent local exchange telecommunications company, other than for a
78 competitive service, shall be lower than its long-run incremental cost, as defined in section
79 386.020, RSMo;

80 (3) The commission, on its own motion or upon motion of the public counsel, may by
81 order, after notice and hearing, define a telecommunications service offered or provided by a
82 telecommunications company as a different telecommunications service dependent upon the

83 geographic area or other market within which such telecommunications service is offered or
84 provided and apply different service classifications to such service only upon a finding, based
85 on clear and convincing evidence, that such different treatment is reasonably necessary to
86 promote the public interest and the purposes and policies of this chapter.

87 5. No telecommunications company may charge a different price per minute or other unit
88 of measure for the same, substitutable, or equivalent interexchange telecommunications service
89 provided over the same or equivalent distance between two points without filing a tariff for the
90 offer or provision of such service pursuant to sections 392.220 and 392.230. In any proceeding
91 under sections 392.220 and 392.230 wherein a telecommunications company seeks to charge a
92 different price per minute or other unit of measure for the same, substitutable, or equivalent
93 interexchange service, the burden shall be on the subject telecommunications company to show
94 that such charges are in the public interest and consistent with the provisions and purposes of this
95 chapter. The commission may modify or prohibit such charges if the subject telecommunications
96 company fails to show that such charges are in the public interest and consistent with the
97 provisions and purposes of this chapter. This subsection shall not apply to reasonable price
98 discounts based on the volume of service provided, so long as such discounts are
99 nondiscriminatory and offered under the same rates, terms, and conditions throughout a
100 telecommunications company's certificated or service area.

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

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

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

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

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

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

115 9. This act shall not be construed to prohibit the commission, upon determining that it
116 is in the public interest, from altering local exchange boundaries, provided that the incumbent
117 local exchange telecommunications company or companies serving each exchange for which the

118 boundaries are altered provide notice to the commission that the companies approve the
119 alteration of exchange boundaries.

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

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

126 12. Packages of services may be offered on an equal basis by incumbent and alternative
127 local exchange companies and shall not be subject to regulation under section 392.240 or
128 392.245, nor shall packages of services be subject to the provisions of subsections 1 through 5
129 of this section, provided that each telecommunications service included in a package is available
130 apart from the package of services and still subject to regulation under section 392.240 or
131 392.245. For the purposes of this subsection, a "package of services" includes more than one
132 telecommunications service or one or more telecommunications service combined with one or
133 more nontelecommunications service. **Any tariff to introduce a new package or to make any
134 change to an existing package, except for the elimination of a package, shall be filed, on an
135 informational basis, with the commission at least one day prior to the introduction of such
136 new package or implementation of such change. Any tariff to eliminate an existing
137 package shall be filed, on an informational basis, with the commission at least ten days
138 prior to the elimination of the package.**

392.220. 1. Every telecommunications company shall print and file with the commission
2 schedules showing the rates, rentals and charges for service of each and every kind by or over
3 its facilities between points in this state and between each point upon its facilities and all points
4 upon all facilities leased or operated by it and between each point upon its facilities or upon any
5 facility leased or operated by it and all points upon the line of any other telecommunications
6 company whenever a through service or joint rate shall have been established between any two
7 points. If no joint rate over through facilities has been established, the several companies joined
8 over such through facilities shall file with the commission the separately established rates and
9 charges applicable where through service is afforded. Such schedule shall plainly state the places
10 between which telecommunications service will be rendered and shall also state separately all
11 charges and all privileges or facilities granted or allowed and any rules or regulations or forms
12 of contract which may in any wise change, affect or determine any or the aggregate of the rates,
13 rentals or charges for the service rendered. Such schedule shall be plainly printed and kept open
14 to public inspection. The commission shall have the power to prescribe the form of every such
15 schedule and may from time to time prescribe, by order, changes in the form thereof. The

16 commission shall also have power to establish rules and regulations for keeping such schedules
17 open to public inspection and may from time to time modify the same. Every
18 telecommunications company shall file with the commission as and when required by it a copy
19 of any contract, agreement or arrangement in writing with any other telecommunications
20 company or with any other corporation, association or person relating in any way to the
21 construction, maintenance or use of telecommunications facilities or service by or rates and
22 charges over or upon any facilities.

23 2. Unless the commission otherwise orders, and except for the rates charged by a
24 telephone cooperative for providing telecommunications service within an exchange or within
25 a local calling scope as determined by the commission other than the rates for exchange access
26 service, no change shall be made in any rate, charge or rental, or joint rate, charge or rental which
27 shall have been filed by a telecommunications company in compliance with the requirements of
28 sections 392.190 to 392.530, except after thirty days' notice to the commission, which notice
29 shall plainly state the changes proposed to be made in the schedule then in force and the time
30 when the changed rate, charge or rental shall go into effect; and all proposed changes shall be
31 shown by filing new schedules or shall be plainly indicated upon the schedules filed and in force
32 at the time and kept open to public inspection. The commission for good cause shown may
33 allow changes in rates, charges or rentals without requiring the thirty days' notice, under such
34 conditions as it may prescribe. All such changes shall be immediately indicated upon its
35 schedules by such telecommunications company. No telecommunications company shall charge,
36 demand, collect or receive a different compensation for any service rendered or to be rendered
37 than the charge applicable to such service as specified in its schedule on file and in effect at that
38 time. No telecommunications company shall refund or remit directly or indirectly any portion
39 of the rate or charge so specified, nor extend to any person or corporation any form of contract
40 or agreement, or any rule or regulation, or any privilege or facility other than such privileges and
41 facilities as are contemplated by sections 392.200, 392.245, and 392.455, except such as are
42 specified in its schedule filed and in effect at the time and regularly and uniformly extended to
43 all persons and corporations under like circumstances for a like or substantially similar service.

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

52 4. Any proposed rate or charge for any new telecommunications service which has not
53 previously been provided by a telecommunications company to its Missouri customers may be
54 suspended by the commission for a period not to exceed [sixty] **thirty** days from the proposed
55 effective date of such proposed rate or charge. This subsection shall not be applicable to any
56 new price or method of pricing for a service presently being offered by any telecommunications
57 company to its Missouri customers. Upon proposing a rate or charge for a telecommunications
58 service which has not previously been provided by a telecommunications company to its
59 Missouri customers, the offeror must file with the commission its justification for considering
60 such offering a new service and such other information as may be required by rule or regulation,
61 and must identify that service as being noncompetitive, transitionally competitive or competitive.
62 If the offeror is a noncompetitive or transitionally competitive telecommunications company and
63 it proposes such service as a transitionally competitive or competitive telecommunications
64 service, the telecommunications service shall be treated as a transitionally competitive
65 telecommunications service until such time as the commission finally determines the appropriate
66 classification. If the offeror is a competitive telecommunications company and it proposes such
67 service as a competitive service, the competitive classification proposed by the offeror of the
68 service shall apply until such time as the commission finally determines the appropriate
69 classification. Such final determination by the commission of the appropriate classification of
70 such service may be made by the commission after the end of the maximum [sixty-day] **thirty-**
71 **day** suspension period, but any such decision by the commission issued after the maximum
72 [sixty-day] **thirty-day** suspension period shall be prospective in nature. The commission shall
73 expedite proceedings under this subsection in order to facilitate the rapid introduction of new
74 telecommunications products and services into the marketplace.

75 5. Unless the commission otherwise orders, any change in rates or charges, or change
76 in any classification or tariff resulting in a change in rates or charges, for any telephone
77 cooperative shall be filed, on an informational basis, with the commission at least thirty days
78 prior to the date for implementation of such change. Nothing contained in this section shall be
79 construed as conferring jurisdiction upon the commission over the rates charged by a telephone
80 cooperative for providing telecommunications service within an exchange or within a local
81 calling scope as determined by the commission, except for exchange access service.

82 6. If after notice and hearing, the commission determines that a telecommunications
83 company has violated the requirements of section 392.200 or this section, it may revoke the
84 certificate of service authority under which that telecommunications company operates and shall
85 direct its general counsel to initiate an action under section 386.600, RSMo, to recover penalties
86 from such telecommunications company in an amount not to exceed the revenues received as a
87 result of such violation multiplied by three or the gross jurisdictional operating revenues of that

88 company for the preceding twelve months, the provisions of section 386.570, RSMo,
89 notwithstanding.

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

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

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

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

37 5. Whenever a small telephone company seeks to implement any new individual or joint
38 rate, rental or charge, or any individual or joint regulation or practice affecting any rate, rental
39 or charge, it shall file same with the commission and notify its customers of such change at least
40 thirty days in advance of the date on which the new rate, rental, charge, regulation or practice is
41 proposed to become effective. Upon the filing by a small telephone company of any new
42 individual or joint rate, rental or charge, or any new individual or joint regulation or practice
43 affecting any rate, rental or charge, the commission shall have, and it is hereby given, authority,
44 either upon complaint or upon its own initiative without complaint, at once, and if it so orders
45 without answer or other formal pleading by the interested small telephone company or
46 companies, but upon reasonable notice, to enter upon a hearing concerning the propriety of such
47 rate, rental, charge, regulation or practice; and pending such hearing and the decision thereon the
48 commission, upon filing with such schedule and delivering to the small telephone company
49 affected thereby a statement in writing of its reasons for such suspension, may suspend the
50 operation of such schedule and defer the use of such rate, rental, charge, regulation or practice,
51 but not for a longer period than one hundred fifty days beyond the time when such rate, rental,
52 charge, regulation or practice would otherwise go into effect. If the commission fails to issue
53 its decision within the one-hundred-fifty-day suspension period, the investigation shall be closed
54 and the rate, rental, charge, regulation or practice shall be considered approved for all purposes.

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

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

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

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

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

28 4. (1) Except as otherwise provided in subsections 8 and 9 of this section and section
29 392.248, the maximum allowable prices for exchange access and basic local telecommunications
30 services of a small, incumbent local exchange telecommunications company regulated under this
31 section shall not be changed for a period of twelve months after the date the company is subject
32 to regulation under this section. Except as otherwise provided in subsections 8 and 9 of this
33 section and section 392.248, the maximum allowable prices for exchange access and basic local
34 telecommunications services of a large, incumbent local exchange telecommunications company
35 regulated under this section shall not be changed prior to January 1, 2000. Thereafter, the
36 maximum allowable prices for exchange access and basic local telecommunications services of
37 an incumbent local exchange telecommunications company shall be annually changed by [one
38 of] the following methods:

39 (a) By the change in the [telephone service component of the] Consumer Price Index
40 [(CPI-TS)] **(CPI)**, as published by the United States Department of Commerce or its successor
41 agency for the preceding twelve months; provided however, that if such a change in the [CPI-TS]
42 **(CPI)** for the preceding twelve months is negative, upon request by the company and approval
43 by the commission for good cause shown, the commission may waive any requirement to reduce
44 prices of exchange access and basic local telecommunications service and those existing prices
45 shall remain the maximum allowable prices for purposes of this section until the next annual
46 change. All revenues that are attributable to a [CPI-TS] **(CPI)** reduction waiver shall be used

47 for the purposes approved by the commission to benefit local exchange ratepayers in a specific
48 exchange or exchanges, including but not limited to expanded local calling scopes; [or]

49 (b) [Upon request by the company and approval by the commission, by the change in the
50 Gross Domestic Product Price Index (GDP-PI), as published by the United States Department
51 of Commerce or its successor agency for the preceding twelve months, minus the productivity
52 offset established for telecommunications service by the Federal Communications Commission
53 and adjusted for exogenous factors.] **Notwithstanding the foregoing, upon a finding that a**
54 **company that is subject to price-cap regulation has telecommunications services in one or**
55 **more exchanges classified as competitive, the company may increase the maximum**
56 **allowable rate for basic local telecommunications service in noncompetitive exchanges at**
57 **a level not to exceed the statewide average for basic local telecommunications service in the**
58 **competitively classified exchanges of that company, provided that any annual increase in**
59 **rates for residential basic local telecommunications service shall not exceed two dollars per**
60 **line per month for a period of four years.**

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

67 (3) [As a part of its request under paragraph (b) of subdivision (1) of this subsection, a
68 company may seek commission approval to use a different productivity offset in lieu of the
69 productivity offset established by the Federal Communications Commission. An adjustment
70 under paragraph (b) of subdivision (1) of this subsection shall not be implemented if the
71 commission determines, after notice and hearing to be conducted within forty-five days of the
72 filing of the notice of a change to a maximum allowable price, that it is not in the public interest.
73 In making such a determination, the commission shall consider the relationship of the proposed
74 price of service to its cost and the impact of competition on the incumbent local exchange
75 telecommunications company's intrastate revenues from regulated telecommunications services.
76 Any adjustments for exogenous factors shall be allocated to the maximum allowable prices for
77 exchange access and basic local telecommunications service in the same percentage as the
78 revenues for such company bears to such company's total revenues from basic local, nonbasic
79 and exchange access services for the preceding twelve months.

80 (4) For the purposes of this section, the term "exogenous factor" shall mean a cumulative
81 impact on a local exchange telecommunications company's intrastate regulated revenue
82 requirement of more than three percent, which is attributable to federal, state or local government

83 laws, regulations or policies which change the revenue, expense or investment of the company,
84 and the term "exogenous factor" shall not include the effect of competition on the revenue,
85 expense or investment of the company nor shall the term include any assessment made under
86 section 392.248.

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

92 5. Each telecommunications service offered to business customers, other than exchange
93 access service, of an incumbent local exchange telecommunications company regulated under
94 this section shall be classified as competitive in any exchange in which at least two nonaffiliated
95 entities in addition to the incumbent local exchange company are providing basic local
96 telecommunications service to business **or residential** customers within the exchange. Each
97 telecommunications service offered to residential customers, other than exchange access service,
98 of an incumbent local exchange telecommunications company regulated under this section shall
99 be classified as competitive in an exchange in which at least two nonaffiliated entities in addition
100 to the incumbent local exchange company are providing basic local telecommunications service
101 to residential customers within the exchange. For purposes of this subsection **and not for**
102 **purposes of defining the commission's jurisdiction:**

103 (1) Commercial mobile service providers as identified in 47 U.S.C. Section 332(d)(1)
104 and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing basic local
105 telecommunications service, provided that only one such nonaffiliated provider shall be
106 considered as providing basic local telecommunications service within an exchange. **If the**
107 **commercial mobile service provider does not designate customers by business or residential**
108 **class, such provider will be deemed to be providing service to both business and residential**
109 **customers;**

110 (2) Any entity providing local voice service in whole or in part over telecommunications
111 facilities or other facilities in which it or one of its affiliates have an ownership interest shall be
112 considered as [a] **providing** basic local telecommunications service [provider] regardless of
113 whether such entity is subject to regulation by the commission, **including any interconnected**
114 **voice over Internet protocol service provider registered under section 392.550.** A provider
115 of local voice service that requires the use of a third party, unaffiliated broadband network or
116 dial-up Internet network for the origination of local voice service shall not be considered a basic
117 local telecommunications service provider. For purposes of this subsection only, a "broadband

118 network" is defined as a connection that delivers services at speeds exceeding two hundred
119 kilobits per second in at least one direction;

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

123 (4) Telecommunications companies only offering prepaid telecommunications service
124 or only reselling telecommunications service as defined in subdivision [(46)] **(54)** of section
125 386.020, RSMo, in the exchange being considered for competitive classification shall not be
126 considered entities providing basic telecommunications service; [and]

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

129 (6) Upon request of an incumbent local exchange telecommunications company seeking
130 competitive classification of [business service or residential service, or both] **its services under**
131 **this subsection**, the commission shall, within thirty days of the request, determine whether [the
132 requisite number of entities are] **there are at least two entities** providing basic local
133 telecommunications service [to business or residential customers, or both,] in an exchange and
134 if so shall approve tariffs designating all such [business or residential] services other than
135 exchange access service, as competitive within such exchange. Notwithstanding any other
136 provision of this subsection, any incumbent local exchange company may petition the
137 commission for competitive classification within an exchange based on competition from any
138 entity providing local voice service in whole or in part by using its own telecommunications
139 facilities or other facilities or the telecommunications facilities or other facilities of a third party,
140 including those of the incumbent local exchange company as well as providers that rely on an
141 unaffiliated third-party Internet service. The commission shall approve such petition within sixty
142 days [unless it finds that such competitive classification is contrary to the public interest]. The
143 commission shall maintain records of [regulated] **certified and registered** providers of local
144 voice service, including those [regulated] providers who provide local voice service over their
145 own facilities, or through the use of facilities of another provider of local voice service. In
146 reviewing an incumbent local exchange telephone company's request for competitive status in
147 an exchange, the commission shall consider their own records concerning ownership of facilities
148 and shall make all inquiries as are necessary and appropriate from [regulated] **certified and**
149 **registered** providers of local voice service to determine the extent and presence of [regulated]
150 local voice providers in an exchange. If the services of an incumbent local exchange
151 telecommunications company are classified as competitive under this subsection, the local
152 exchange telecommunications company may thereafter adjust its rates for such competitive
153 services upward or downward as it determines appropriate in its competitive environment, upon

154 filing tariffs which shall become effective within the time lines identified in section 392.500.
155 The commission [shall] **may**, [at least] **not more than once** every two years[, or where an
156 incumbent local exchange telecommunications company increases rates for basic local
157 telecommunications services in an exchange classified as competitive,] review those exchanges
158 where an incumbent local exchange carrier's services have been classified as competitive, to
159 determine if the conditions of this subsection for competitive classification continue to exist in
160 the exchange and if the commission determines, after hearing, that such conditions no longer
161 exist for the incumbent local exchange telecommunications company in such exchange, it shall
162 reimpose upon the incumbent local exchange telecommunications company, in such exchange,
163 the provisions of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the **new**
164 maximum allowable prices **for basic local telecommunications service in such exchange shall**
165 **be** established by the provisions of [subsections] **subsection 4** [and 11] of this section[, and, in
166 any such case, the maximum allowable prices established for the telecommunications services
167 of such incumbent local exchange telecommunications company shall reflect all index
168 adjustments which were or could have been filed from all preceding years since the company's
169 maximum allowable prices were first adjusted pursuant to subsection 4 or 11 of this section.] ;

170 **(7) Upon a finding that fifty-five percent or more of an incumbent local exchange**
171 **telecommunications company's total subscriber access lines are in exchanges where such**
172 **company's services have been declared competitive, the incumbent local exchange**
173 **telecommunications company shall be deemed competitive and shall no longer be subject**
174 **to price-cap regulation, except that rates charged for basic local telecommunications**
175 **service in exchanges that were noncompetitive immediately prior to this finding can be**
176 **increased to a rate that is no higher than the statewide average rate for basic local**
177 **telecommunications service in the incumbent local exchange company's competitively**
178 **classified exchanges for a period of four years. During the four year period, any annual**
179 **increase in rates for residential basic local telecommunications service shall not exceed two**
180 **dollars per line per month. Rates charged for exchange access service by an incumbent**
181 **local exchange telecommunications company deemed competitive shall not exceed the rates**
182 **charged at the time the company was deemed competitive;**

183 **(8) An incumbent local exchange telecommunications company deemed competitive**
184 **under this section and all alternative local exchange telecommunications companies shall**
185 **not be required to comply with customer billing rules, network engineering and**
186 **maintenance rules, and rules requiring the recording and submitting of service objectives**
187 **or surveillance levels established by the commission, but shall be subject to commission**
188 **authority to hear and resolve customer complaints to the extent the customer complaint is**
189 **based on Truth-in-Billing regulations established by the Federal Communications**

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

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

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

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

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

(10) Should the commission determine that an emergency exists that impacts public safety or is essential for the protection of a majority of customers of all local exchange

telecommunications companies operating in this state, the commission may, on an emergency basis, impose its customer billing rules, network engineering and maintenance rules, and rules requiring the recording and submitting of service objectives or surveillance levels, as applicable, on all local exchange telecommunications companies on a uniform and non-discriminatory basis through the promulgation of emergency rules pursuant to section 536.025, RSMo. The commission shall only promulgate such emergency rules after determining that:

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

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

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

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

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

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

8. An incumbent local exchange telecommunications company regulated under this section may reduce intrastate access rates, including carrier common line charges, subject to the provisions of subsection 9 of this section, to a level not to exceed one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company [is] first [subject to regulation under this section] **exercises its option to rebalance rates under this subsection.** [Absent commission action under subsection 10 of this section, an incumbent local exchange telecommunications company regulated under this section shall have four years from the date the company becomes subject to regulation under this section to make the adjustments authorized under this subsection and subsection 9 of this section.] Nothing in this subsection shall preclude an incumbent local

262 exchange telecommunications company from establishing its intrastate access rates at a level
263 lower than one hundred fifty percent of the company's interstate rates for similar access services
264 in effect as of December thirty-first of the year preceding the year in which the company [is] first
265 [subject to regulation under this section] **exercises its option to rebalance rates under this**
266 **subsection.**

267 9. Other provisions of this section to the contrary notwithstanding [and no earlier than
268 January 1, 1997], the commission shall allow an incumbent local exchange telecommunications
269 company regulated under this section which reduces its intrastate access service rates pursuant
270 to subsection 8 of this section to offset the **annual** revenue loss resulting from [the first year's]
271 **its** access service rate reduction by increasing **each year** its monthly maximum allowable prices
272 applicable to basic local exchange telecommunications services by an amount not to exceed one
273 dollar fifty cents. A large incumbent local exchange telecommunications company shall not
274 increase its monthly rates applicable to basic local telecommunications service under this
275 subsection unless it also reduces its rates for intraLATA interexchange telecommunications
276 services by at least ten percent **in the year it first exercises its option to rebalance rates under**
277 **subsection 8 of this section.** [No later than one year after the date the incumbent local exchange
278 telecommunications company becomes subject to regulation under this section, the commission
279 shall complete an investigation of the cost justification for the reduction of intrastate access rates
280 and the increase of maximum allowable prices for basic local telecommunications service. If the
281 commission determines that the company's monthly maximum allowable average statewide
282 prices for basic local telecommunications service after adjustment pursuant to this subsection
283 will be equal to or less than the long-run incremental cost, as defined in section 386.020, RSMo,
284 of providing basic local telecommunications service and that the company's intrastate access
285 rates after adjustment pursuant to this subsection will exceed the long-run incremental cost, as
286 defined in section 386.020, RSMo, of providing intrastate access services, the commission shall
287 allow the company to offset the revenue loss resulting from the remaining three-quarters of the
288 total needed to bring that company's intrastate access rates to one hundred fifty percent of the
289 interstate level by increasing the company's monthly maximum allowable prices applicable to
290 basic local telecommunications service by an amount not to exceed one dollar fifty cents on each
291 of the next three anniversary dates thereafter; otherwise, the commission shall order the reduction
292 of intrastate access rates and the increase of monthly maximum allowable prices for basic local
293 telecommunications services to be terminated at the levels the commission determines to be
294 cost-justified.] The total **annual** revenue increase due to the increase to the monthly maximum
295 allowable prices for basic local telecommunications service shall not exceed the total **annual**
296 revenue loss resulting from the reduction to intrastate access service rates.

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

303 11. [The maximum allowable prices for nonbasic telecommunications services of a
304 small, incumbent local exchange telecommunications company regulated under this section shall
305 not be changed until twelve months after the date the company is subject to regulation under this
306 section or, on an exchange-by-exchange basis, until an alternative local exchange
307 telecommunications company is certified and providing basic local telecommunications service
308 in such exchange, whichever is earlier. The maximum allowable prices for nonbasic
309 telecommunications services of a large, incumbent local exchange telecommunications company
310 regulated under this section shall not be changed until January 1, 1999, or on an
311 exchange-by-exchange basis, until an alternative local exchange telecommunications company
312 is certified and providing basic local telecommunications service in such exchange, whichever
313 is earlier. Thereafter, the maximum allowable prices for nonbasic telecommunications services
314 of an incumbent local exchange telecommunications company may be annually increased by up
315 to five percent for each of the following twelve-month periods upon providing notice to the
316 commission and filing tariffs establishing the rates for such services in such exchanges at such
317 maximum allowable prices. This subsection shall not preclude an incumbent local exchange
318 telecommunications company from proposing new telecommunications services and establishing
319 prices for such new services. An incumbent local exchange telecommunications company may
320 change the rates for its services, consistent with the provisions of subsections 2 through 5 of
321 section 392.200, but not to exceed the maximum allowable prices, by filing tariffs which shall
322 be approved by the commission within thirty days, provided that any such rate is not in excess
323 of the maximum allowable price established for such service under this section.] **All nonbasic**
324 **telecommunications services of an incumbent local exchange telecommunications company**
325 **that is subject to price-cap regulation shall be exempt from limitations on maximum**
326 **allowable prices.**

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

332 13. Prior to January 1, 2006, the commission shall determine the weighted, statewide
333 average rate of nonwireless basic local telecommunications services as of August 28, 2005. The
334 commission shall likewise determine the weighted, statewide average rate of nonwireless basic
335 local telecommunications services two years and five years after August 28, 2005. The
336 commission shall report its findings to the general assembly by January 30, 2008, and provide
337 a second study by January 30, 2011. If the commission finds that the weighted, statewide
338 average rate of nonwireless basic local telecommunications service in 2008 or 2011 is greater
339 than the weighted, statewide average rate of nonwireless basic local telecommunications service
340 in 2006 multiplied by one plus the percentage increase in the Consumer Price Index for all goods
341 and services for the study periods, the commission shall recommend to the general assembly such
342 changes in state law as the commission deems appropriate to achieve the purposes set forth in
343 section 392.185. In determining the weighted, statewide average rate of nonwireless basic local
344 telecommunications service, the commission shall exclude rate increases to nonwireless basic
345 telecommunications service permitted under subsections 8 and 9 of this section and section
346 392.240 or exogenous costs incurred by the providers of nonwireless basic local
347 telecommunications service.

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

10 2. The commission [or a petitioner] shall serve by regular mail a copy of any petition or
11 motion filed under subsection 1 of this section on all telecommunications companies that have
12 applied for authority to provide or are authorized to provide intrastate telecommunications
13 service within this state. In response to a petition filed [or a proceeding instituted upon its own
14 motion], the commission shall afford all interested persons reasonable notice and an opportunity
15 to be heard to determine whether a telecommunications company or service may be subject to
16 sufficient competition to justify a lesser degree of regulation. In making this determination, the
17 commission shall, within nine months of the filing of the petition [or initiation of a proceeding]
18 under this section, consider all relevant factors and shall issue written findings of fact delineating
19 all factors considered. [The commission may, for good cause, extend the time for determination
20 for an additional three months. A second extension period not exceeding three months may, for

21 good cause, be granted by the commission.] In any hearing involving the same
22 telecommunications service or company, the commission may, if appropriate and if no new
23 finding of fact is required, rely on a finding of fact made in a prior hearing.

24 3. The commission may classify a telecommunications company as a competitive
25 telecommunications company [only] upon a finding that [all] **a majority of its**
26 telecommunications services offered by such company are competitive telecommunications
27 services.

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

32 (1) The subject telecommunications service offered by a telecommunications company
33 as a competitive telecommunications service;

34 (2) The subject telecommunications service offered by a noncompetitive or transitionally
35 competitive telecommunications company as a transitionally competitive telecommunications
36 service;

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

39 (4) The subject interexchange telecommunications company as a transitionally
40 competitive telecommunications company.

41 5. By its order classifying a telecommunications service as competitive or transitionally
42 competitive or a telecommunications company as competitive or transitionally competitive, the
43 commission may, with respect to that service or company and with respect to one or more
44 providers of that service, suspend or modify the application of its rules or the application of any
45 statutory provision contained in sections 392.200 to 392.340, except as provided in section
46 392.390. [The commission may suspend different requirements for different telecommunications
47 companies, if such different treatment is reasonable and not detrimental to the public interest.]

48 6. If the commission suspends the application of a statutory requirement under this
49 section, it may require a telecommunications company to comply with any conditions reasonably
50 made necessary to protect the public interest by the suspension of the statutory requirement. **The**
51 **exchange access rates of an incumbent local exchange company that is declared a**
52 **competitive telecommunications company shall not exceed the rates that were charged at**
53 **the time the company became a competitive telecommunications company. The exchange**
54 **access rates of an alternative local exchange company shall not exceed the exchange access**
55 **rates of the incumbent local exchange company against whom the alternative local**
56 **exchange company is competing.**

57 7. [If necessary to protect the public interest, the commission may at any time, by order,
58 after hearing upon its own motion or petition filed by the public counsel, a telecommunications
59 company, or any person or persons authorized to file a complaint as to the reasonableness of any
60 rates or charges under section 386.390, RSMo, reimpose or modify the statutory provisions
61 suspended under subsection 5 of this section upon finding that the company or service is no
62 longer competitive or transitionally competitive or that the lesser regulation previously
63 authorized is no longer in the public interest or no longer consistent with the provisions and
64 purposes of this chapter.

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

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

 392.370. [l.] After the effective date of an order of the commission which finds,
2 pursuant to section 392.361, that a telecommunications service is sufficiently competitive to
3 justify a lesser degree of regulation, the same, substitutable, or equivalent service offered by a
4 transitionally competitive or noncompetitive telecommunications company shall be classified
5 as transitionally competitive [pursuant to the procedure set out in subsection 2 of section
6 392.490], if the telecommunications service granted a lesser degree of regulation is authorized
7 to be provided anywhere within the certificated or service area of the transitionally competitive
8 or noncompetitive telecommunications company. Any transitionally competitive
9 telecommunications service offered by a noncompetitive local exchange telecommunications
10 company shall be classified as a competitive telecommunications service no later than three years
11 after the effective date of a tariff for such service bearing the classification "transitionally
12 competitive". Any transitionally competitive service offered by a transitionally competitive
13 interexchange telecommunications company shall be classified as a competitive
14 telecommunications service no later than two years after the effective date of a tariff for such
15 service bearing the classification "transitionally competitive". **The exchange access rates of an**
16 **incumbent local exchange company that is declared a competitive telecommunications**
17 **company shall not exceed the rates that were charged at the time the company became a**
18 **competitive telecommunications company. The exchange access rates of an alternative**

19 **local exchange company shall not exceed the exchange access rates of the incumbent local**
20 **exchange company against whom the alternative local exchange company is competing.**

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

41 3. The commission may issue an order, effective at or after such time as the commission
42 may no longer extend or reinstate a transitionally competitive service classification, that
43 reclassifies a competitive or transitionally competitive telecommunications service as a
44 noncompetitive telecommunications service if the commission, after notice and hearing upon its
45 own motion or petition filed by the public counsel, a telecommunications company, or any
46 person or persons authorized to file a complaint as to the reasonableness of any rates or charges
47 under section 386.390, RSMo, determines that a competitive classification for such service is
48 not in the public interest or not consistent with the provisions and purposes of this chapter.
49 Should the commission issue an order under this subsection reclassifying a competitive or
50 transitionally competitive telecommunications service as noncompetitive it shall thereafter apply
51 equal regulation, with respect to such service, to all telecommunications companies providing
52 the same equivalent or substitutable telecommunications service.

53 4. No tariff which proposes a new rate, rental, or charge or new regulation or practice
54 affecting any rate, rental, or charge for a transitionally competitive telecommunications service

55 which is filed by a noncompetitive local exchange telecommunications company, or a
56 noncompetitive or transitionally competitive interexchange telecommunications company, shall
57 be effective unless and until the noncompetitive local exchange telecommunications company,
58 or the noncompetitive or transitionally competitive interexchange telecommunications company,
59 offering or providing, or seeking to offer or provide, such proposed transitionally competitive
60 telecommunications service prepares and files a study of the cost of providing such service.
61 Such study may in the commission's discretion be given proprietary treatment at the request of
62 such company.

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

66 6. So long as a transitionally competitive interexchange telecommunications company
67 charges the same price per minute or other unit of measure for the same, equivalent, or
68 substitutable interexchange telecommunications service provided over the same or equivalent
69 distance between any two points, the provisions of subsections 4 and 5 of this section shall not
70 apply to such transitionally competitive interexchange telecommunications company for any
71 proposed decrease in rates for a transitionally competitive interexchange telecommunications
72 service. Such proposed decrease shall instead be treated as a competitive service pursuant to
73 section 392.500.

74 7. A transitionally competitive telecommunications service which becomes a competitive
75 telecommunications service pursuant to this section or section 392.361 shall no longer be subject
76 to the provisions of subsections 4, 5, and 6 of this section and any increase or decrease in rates
77 or charges applicable to such competitive service shall be treated pursuant to section 392.500.]

392.420. The commission is authorized, in connection with the issuance or modification
2 of a certificate of interexchange or local exchange service authority or the modification of a
3 certificate of public convenience and necessity for interexchange or local exchange
4 telecommunications service, to entertain a petition [under section 392.361 and in accordance
5 with the procedures set out in section 392.361,] to suspend or modify the application of its rules
6 or the application of any statutory provision contained in sections 392.200 to 392.340 if such
7 waiver or modification is otherwise consistent with the other provisions of sections 392.361 to
8 392.520 and the purposes of this chapter. **In the case of an application for certificate of**
9 **service authority to provide basic local telecommunications service filed by an alternative**
10 **local exchange telecommunications company, and for all existing alternative local exchange**
11 **telecommunications companies, the commission shall waive, at a minimum, the application**
12 **and enforcement of its quality of service and billing standards rules, as well as the**
13 **provisions of subsection 2 of section 392.210, subsection 1 of section 392.240, and sections**

14 **392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340.**
15 **Notwithstanding any other provision of law in this chapter and chapter 386, RSMo, where**
16 **an alternative local exchange telecommunications company is authorized to provide local**
17 **exchange telecommunications services in an incumbent local exchange telecommunications**
18 **company's authorized service area, the incumbent local exchange telecommunications**
19 **company may opt into all or some of the above-listed statutory and commission rule**
20 **waivers by filing a notice of election with the commission that specifies which waivers are**
21 **elected. In addition, where an interconnected voice over Internet protocol service provider**
22 **is registered to provide service in an incumbent local exchange telecommunications**
23 **company's authorized service area under section 392.550, the incumbent local exchange**
24 **telecommunications company may opt into all or some of the above-listed statutory and**
25 **commission rule waivers by filing a notice of election with the commission that specifies**
26 **which waivers are elected. The commission may reimpose its quality of service and billing**
27 **standards rules, as applicable, on an incumbent local exchange telecommunications**
28 **company but not on a company granted competitive status under subdivision (7) of**
29 **subsection 5 of section 392.245 in an exchange where there is no alternative local exchange**
30 **telecommunications company or interconnected voice over Internet protocol service**
31 **provider that is certificated or registered to provide local voice service only upon a finding,**
32 **following formal notice and hearing, that the incumbent local exchange**
33 **telecommunications company has engaged in a pattern or practice of inadequate service.**
34 **Prior to formal notice and hearing, the commission shall notify the incumbent local**
35 **exchange telecommunications company of any deficiencies and provide such company an**
36 **opportunity to remedy such deficiencies in a reasonable amount of time, but not less than**
37 **sixty days. Should the incumbent local exchange telecommunications company remedy**
38 **such deficiencies within a reasonable amount of time, the commission shall not reimpose**
39 **its quality of service or billing standards on such company.**

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

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

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

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

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

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

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

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

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

12 2. In addition, the commission shall adopt such rules, consistent with section 253(b) of
13 the federal Telecommunications Act of 1996 to preserve and advance universal service, protect
14 the public safety and welfare, ensure the continued quality of telecommunications services, and

15 safeguard the rights of consumers. Such rules, at a minimum, shall require that all applicants
16 seeking a certificate to provide basic local telecommunications services under this section:

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

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

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

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

29 3.] The state of Missouri hereby adopts and incorporates in total the provisions of section
30 251(f)(1) of the federal Telecommunications Act of 1996 providing exemption for certain rural
31 telephone companies.

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

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

20 subsection 1 of section 392.370 and subsection 2 of section 392.490. All telecommunications
21 services not properly classified as competitive or transitionally competitive shall be classified
22 as noncompetitive telecommunications service.]

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

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

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

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

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

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

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

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

13 **3. The commission shall grant a registration, without a hearing and no later than
14 thirty days following the filing of an application accompanied by an affidavit signed by an
15 officer or general partner of the applicant stating the following:**

16 **(1) The location of the principal place of business and the names of the principal
17 executive officers of the applicant;**

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

20 **(3) That the applicant is legally, financially, and technically qualified to provide
21 interconnected voice over Internet protocol services;**

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

25 **(5) That the applicant will charge and collect from its end-user customers on
26 interconnected voice over Internet protocol service, and remit to the appropriate authority,
27 fees and surcharges in the same manner as are charged and collected upon end user**

28 customers of local exchange telecommunications service and remitted by local exchange
29 telecommunications companies, including but not necessarily limited to:

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

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

32 (c) Local enhanced 911;

33 (d) Any applicable license tax;

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

36 (7) That the applicant will file, either directly or indirectly through an affiliated
37 competitive local exchange carrier, with the commission an annual report at a time and
38 covering the yearly period fixed by the commission. Verification shall be made by the
39 official holding office at the time of the filing of such report, and if not made upon the
40 knowledge of the person verifying, the same shall set forth in general terms the sources of
41 his or her information and the grounds for his or her belief as to any matters not stated to
42 be verified on his or her knowledge. Such annual report shall be verified by the oath of the
43 president, treasurer, general manager, or receiver, if any, of any of such companies, or by
44 the person required to file the same. The commission shall prescribe the form of such
45 reports and the character of the information to be contained therein; provided, however,
46 that such form and character of the information to be provided shall be limited to:

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

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

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

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

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

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

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

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

64 **(4) To assess and collect fees and surcharges under subdivisions (5) and (6) of**
65 **subsection 3 of this section;**

66 **(5) To hear and resolve complaints under sections 386.390 and 386.400, RSMo,**
67 **regarding the payment or nonpayment for exchange access services regardless of whether**
68 **a user of exchange access service has been certificated or registered by the commission and**
69 **regardless of whether the commission otherwise has authority over such user. This**
70 **subdivision shall not grant the commission authority to review rates for exchange access**
71 **services that are set under section 392.245; and**

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

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

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

14 2. A noncompetitive or transitionally competitive telecommunications
15 company which seeks to file a tariff classifying a telecommunications service as
16 transitionally competitive by operation of subsection 1 of section 392.370, shall
17 apply to the commission for an order finding that the transitionally competitive
18 classification is consistent with subsection 1 of section 392.370. If such tariff
19 does not otherwise propose a new rate, rental or charge or new regulation or
20 practice affecting any rate, rental or charge, the transitionally competitive
21 classification shall become effective ninety days after filing with the commission
22 and notice to public counsel and all telecommunications companies unless the
commission issues an order prior to the effective date of such tariff, after notice

23 and hearing, upon its own motion or upon complaint by the public counsel or a
24 telecommunications company, which finds that the transitionally competitive
25 classification is not consistent with subsection 1 of section 392.370.]
26

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

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

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

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

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

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