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comment, the issue of discontinuance for nonpayment of charges which are subject to a dispute is raised.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission determines after reviewing the proposed rules and the comments that the prohibition against discontinuance of service for nonpayment of charges which are the subject of a dispute has been inadvertently removed from proposed Chapter 33. The prohibition is implied, and the comments to the proposed rule assume that it exists, but no specific prohibition is included in the rules. Therefore, the Commission will amend section (4) and (5) to explicitly state this prohibition.

**COMMENT:** One written comment was received which suggested that section (6) be amended. The commenter suggested that in order to have consistent time frames in this rule, "4 working days" should be modified to "5 business days".

**RESPONSE:** The Commission interprets this comment to suggest that the term "working days" in section (6) be amended to read "business days." The commenter made no statement as to why five days should be required instead of four days. The Commission finds that the term "business days" is not used elsewhere in this rule and therefore, is not inconsistent with any other provision of this rule. The Commission determines that no amendment to this proposed rule is necessary as a result of this comment.

**COMMENT:** One written comment suggested that interest should be included on any amount refunded to the customer.

**RESPONSE:** The Commission has insufficient information regarding the amount of charges that are refunded to customers, the length of time those amounts have been held by the company, or the frequency with which this occurs. The Commission finds that making such a requirement would not be reasonable without proposing this as a separate rulemaking proceeding where comments from the general public and the industry can be received and the fiscal impact can be studied. Therefore, the Commission determines that no amendment to this rule is necessary as a result of this comment.

**COMMENT:** One comment in support of section (9) was received from a telecommunications company. The commenter stated that section (9) "will increase efficiency and streamline complaint procedures."

**RESPONSE:** The Commission finds that no amendment to this rule is necessary as a result of this comment.

**COMMENT:** One written comment suggested that section (9) be clarified by adding the phrase, "After the resolution of the customer complaint," to the beginning of the section.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission finds that this suggestion would clarify the intent of the section. Therefore, the Commission will amend section (9) as suggested.

**COMMENT:** One general written comment in support of the proposed rule was received. The commenter stated that section (5) was consistent with other Commission rules found in 4 CSR 240-13.045.

**RESPONSE:** The Commission finds that that no amendment to this rule is necessary as a result of this comment.

**COMMENT:** One general written comment was received which objected to the rule because the rule applies only to residential customers and does not extend to business customers. The commenter suggested that a new provision be added to the rule that would require the companies to keep records of consumer complaints and reports of billing errors. The commenter recommended that the rule require those records to be reported to the Commission on a quarterly basis. The commenter also objected to "the waiver of the right to continuance of service as a sanction for nonpayment of the undisputed amount."

**RESPONSE:** The Commission finds that this rule should not be applied to both residential customers and to business customers. The Commission acknowledges that not every business customer has the resources or bargaining power of a large business. However, the Commission finds that applying this rule to business customers could result in a reduction in competitive companies' abilities to negotiate contracts.

The Commission's rules require that a company keep track of billing records for customers. In addition, the Commission has statutory authority to investigate companies and to audit records of the companies. The Commission's rules also provide complaint procedures for customers. The Commission finds that there is not sufficient information to add additional record keeping requirements for the companies at this time. The Commission determines that this requirement would be more appropriate as a separate rulemaking where comments from the public and the industry can be received and the fiscal impact of the rule can be studied.

Finally, some of the statements received from this commenter were unclear. However, the Commission finds that it is reasonable for a customer to be subject to discontinuance of service for nonpayment of undisputed charges. Therefore, Commission finds that that no amendment to this rule is necessary as a result of this comment.

#### 4 CSR 240-33.080 Disputes by Residential Customers

(1) A customer shall advise a telecommunications company that all or part of a charge is in dispute by written notice, in person or by a telephone message directed to the telecommunications company during normal business hours. A dispute must be registered with the utility prior to the delinquent date of the charge for a customer to avoid discontinuance of service as provided by these rules.

(4) If a customer disputes a charge, the customer shall pay an amount to the telecommunications company equal to that part of the total bill not in dispute. The amount not in dispute shall be mutually determined by the parties. The parties shall consider the customer's prior usage, the nature of the dispute and any other pertinent factors in determining the amount not in dispute. The telecommunications company shall not discontinue service to a customer for nonpayment of charges in dispute while that dispute is pending.

(5) If the parties are unable to mutually determine the amount not in dispute, the customer shall pay to the telecommunications company, at the company's option, an amount not to exceed fifty percent (50%) of the charge in dispute or an amount based on usage during a like period under similar conditions which shall represent the amount not in dispute. The telecommunications company shall not discontinue service to a customer for nonpayment of charges in dispute while that dispute is pending.

(9) After resolution of the customer complaint, a telecommunications company may treat a customer's complaint or dispute involving the same question or issue as one of the same facts as already determined and is not required to comply with these rules more than once prior to discontinuance of service.

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#### Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

#### Division 240—Public Service Commission Chapter 33—Service and Billing Practices for Telephone Utilities

TX-2000-168

#### ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.040, RSMo 1994, and 386.250

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and 392.200, RSMo Supp. 1999, the commission rescinds a rule as follows:

**4 CSR 240-33.090 Settlement Agreements is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2371). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** This rescission was proposed in conjunction with a replacement proposed rule. The comments received were directed to the proposed rule.

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

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Public Service Commission under sections 386.040, RSMo 1994, and 386.250 and 392.200, RSMo Supp. 1999, the commission adopts a rule as follows:

**4 CSR 240-33.090 Settlement Agreements with Residential  
Customers is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2371). No changes have been made to the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** Three written comments to the proposed rule were received. No comments to this proposed rule were received at the public hearing held on November 15, 1999.

**COMMENT:** One general written comment was received that objected to the rule as proposed because the rule applies only to residential customers and not to business customers. The commenter also stated that "[c]ustomers should be advised in the collection process that cancellation of optional, non-basic services may assist them to retain basic local calling service."

**RESPONSE:** The rule as proposed is substantially similar to the rule currently in effect that was originally promulgated in 1977. The Commission finds that this rule should not be applied to both residential customers and to business customers. The Commission acknowledges that not every business customer has the resources or bargaining power of a large business, however, the Commission finds that applying this rule to business customers could result in a reduction in these competitive companies' abilities to negotiate a contract. Furthermore, the Commission finds that there is not sufficient information to determine that customers may be better able to retain basic local calling service by the cancellation of non-basic services. Therefore, the Commission finds that no changes to this proposed rule are required as a result of the comment.

**COMMENT:** Two written comments were received which generally supported the rule as proposed.

**RESPONSE:** The Commission finds that no amendment to the proposed rule is necessary as result of the comment.

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

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Public Service Commission under sections 386.040, RSMo 1994, and 386.250 and 392.200, RSMo Supp. 1999, the commission rescinds a rule as follows:

**4 CSR 240-33.100 Variance is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2371-2372). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** This rescission was proposed in conjunction with a replacement proposed rule. The comments received were directed to the proposed rule.

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

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Public Service Commission under sections 386.040, RSMo 1994, and 386.250 and 392.200, RSMo Supp. 1999, the commission adopts a rule as follows:

**4 CSR 240-33.100 is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2372). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** Three written comments to the proposed rule were received. No comments were received for this proposed rule at the public hearing held on November 15, 1999.

**COMMENT:** One written comment was received which suggested that section (2) be amended so that the requirements of a request for a variance in this chapter is similar to the requirements for a request for variance in Chapter 2 of the Commission's rules. The commenter also suggested that the rule require a copy of the request for variance to be served on the Office of the Public Counsel.

**RESPONSE:** The proposed rule requires that requests for variances be filed with the Secretary of the Commission in accordance with rule 2.060. In addition, all pleadings, including a request for variance, are subject to all of the procedural rules in Chapter 2. The Commission has recently promulgated new rules in Chapter 2 that require all pleadings be served on the Office of the Public Counsel. Therefore, the Commission finds that no amendment to the proposed rule is necessary as a result of this comment.

**COMMENT:** One written comment was received in general support of the proposed rule. The commenter suggested two grammatical changes to the proposed rule. First the commenter suggested that