

is rendered on or about the same day of each month or as otherwise agreed to by the customer.

(6) Every bill shall clearly state—

- (A) The number of access lines for which charges are stated;
- (B) The beginning or ending dates of the billing period for which charges are stated;
- (C) A statement of the date the bill becomes delinquent if not paid;
- (D) Penalty fees and advance payments, if any;
- (E) The unpaid balance, if any;
- (F) The amount due for basic service;
- (G) An itemization of the amount due for all other regulated or nonregulated services including the date and duration (in minutes or seconds) of each toll call if such service is provided as an individual service;
- (H) The amount due for all other regulated or nonregulated services offered at a packaged rate and an itemization of each service included in the package;
- (I) An itemization of the amount due for taxes, franchise fees and other fees and/or surcharges which the telecommunications company, pursuant to its tariffs, bills to customers;
- (J) The total amount due;
- (K) A toll free telephone number where inquiries and/or dispute resolutions may be made for each company with charges appearing on the customer's bill;
- (L) The amount of any deposit, advance payments and/or interest accrued on a deposit which has been credited to the charges stated; and
- (M) Any other credits and charges applied to the account during the current billing period.

(N) The amount of any deposit held by the company and the interest at an annual rate shall be stated on the first bill for which a customer receives service and on the last bill for which the customer received service.

(8) During the first billing period in which a customer receives service, a customer must receive a bill insert or other written notice that contains an itemized account of the charges for the equipment and service for which the customer has contracted.

**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 section 386.250(11), RSMo Supp. 1999, the commission rescinds a rule as follows:

4 CSR 240-33.050 Deposits and Guarantees of Payment is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2355). 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 240-33.050 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 2355-2358). 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: Seven written comments from various telecommunications companies and state agencies were received. In addition, four witnesses or representatives of companies or state agencies made comments at the public hearing held on November 15, 1999.

COMMENT: Two written comments objected to section (1) because it suggests that a deposit may not be required until after service is provided. One commenter suggested that the language be changed to mirror the language of the rule currently in effect. A representative of this same company made similar remarks at the public hearing on this proposed rule.

The second commenter stated that section (2) of this proposed rule addresses deposits that may be required for continued service and therefore, section (1) addresses deposits required in advance of obtaining service. The second commenter suggested amending section (1) by adding the words "prior to or" before the phrase "within thirty (30) calendar days."

RESPONSE AND EXPLANATION OF CHANGE: The rule as proposed was intended to give the company the option of requiring the deposit at any time within 30 days of providing service. Thus, the deposit could be required up to 30 days prior to service being provided, or up to 30 days after service had been provided. Upon review of the comments to this rule, the Commission determines that the rule should be amended to clearly state that a deposit may be required prior to service being provided. Therefore, the Commission will amend section (1) for clarification purposes.

COMMENT: One written comment suggested that section (1) be clarified. The commenter stated that the timing of the request for a deposit as a condition of new service was not as significant as those conditions being stated in the tariffs of the company. The commenter suggested alternative language for section (1) as follows: (1) A telecommunications company may require a deposit or guarantee as a condition of new service as stated in the company's tariff. The commenter explained that this alternative would allow the companies to set varying conditions for deposits with approval of the tariff by the Commission. The commenter also made statements at the public hearing in response to Commission questions. At the hearing, the commenter stated that there was no objection from the Staff of the Commission to the companies collecting a deposit before service was provided.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that section (1) should be clarified. The rule as proposed was intended to give the company the option of requiring the deposit at any time within 30 days of providing service.

Thus, the deposit could be required up to 30 days prior to service being provided, or up to 30 days after service had been provided. In addition, the Commission finds that the time period for requiring a deposit as a condition of new service should be established in each company's tariff. Therefore, the Commission will amend section (1) for clarification purposes and to require these provisions be tarified by the company.

COMMENT: One written comment suggested that section (1) should be amended so that it is "limited to a customer who has no prior credit history with the telecommunications company when new service is requested." The same commenter made remarks at the public hearing. At the public hearing the commenter stated that there was no objection to deposits being required prior to service being provided, so long as the criteria for requiring that deposit was set out in the Commission's rules.

RESPONSE: The Commission has amended its definition of "new customer" in proposed rule 33.020(16) so that the emphasis in determining a "new" customer is placed on the service history rather than the credit history with the customer. This amendment was made at the suggestion of this same commenter. The Commission agreed with the commenter in rule 33.020(16) and for the same reason must now disagree with the comment in this rule. The Commission finds that this rule was intended to focus on the customer's service history, not the customer's credit history. Therefore, the Commission determines that no further amendment to the proposed rule is necessary as a result of this comment.

COMMENT: One written comment objected to subsection (2)(A) of the proposed rule. The commenter stated that the new rule shifts the burden of proving credit worthiness from the customer to the company. The commenter stated that this is inappropriate and will "create the incentive for carriers to not serve customers that would otherwise be served under the" rules as they are currently in effect. The commenter suggested that the rule should be withdrawn and the current rule allowed to remain in effect. A representative of the same telecommunications company made similar remarks at the public hearing on this rule.

RESPONSE: The commenter directed his comments to subsection (2)(A). However, subsections (2)(A) and (B) are substantially similar to the provisions in the current rule and no shifting of the burden to prove creditworthiness has occurred in these subsections. The change in section (2) is that subsection (2)(C) of the current rule was not included in this proposed rule. The Commission responds below to the comments related to subsection (2)(C). The language that the commenter suggests can be found in subsections (1)(A) and (B) of the current rule. Those subsections set out the criteria a customer must meet for a telecommunications company to require a deposit as a condition of service. The Commission finds that the telecommunications companies are in a better position to provide proof of the customer's service, because the company is required by these rules to keep those records. In addition, while the proposed rule may narrow the conditions allowed for requiring a deposit for continued service, the proposed rule broadens the companies' ability to require a deposit for new service. The Commission finds that the rule as proposed is reasonable. Therefore, the Commission determines that no amendment to this rule is necessary as a result of the comment.

COMMENT: One written comment objected to the proposed section (2) because it deletes one option for requiring a deposit for continued service which is available under the current rule. The commenter suggested subsection (3)(C) from the rule currently in effect be added.

RESPONSE: The language suggested by the commenter would allow the telecommunications company to collect a deposit as a requirement of continued service for a customer whose toll or other charges for the current billing period exceed 400% of that

customer's deposit or guarantee previously required by the telephone company. The Commission finds that amending the proposed rule as suggested or withdrawing the proposed rule could create a situation where a customer is innocently put in the position of having to pay a deposit merely because that customer has had a family emergency or other unexpected situation which has required extraordinary toll charges for that customer, and not because that customer is a substantial credit risk or "bad actor." The Commission finds that no changes to this rule as proposed are necessary as a result of this comment.

COMMENT: One written comment was received in support of the conditions proposed for requiring a deposit for continued service. **RESPONSE:** The Commission finds that no amendment to the proposed rule is necessary as a result of this comment.

COMMENT: One written comment was received which indicated that section (4) should be more flexible by setting out the conditions for deposits in the rule, but also giving the companies the options of setting other conditions in the company's tariff.

RESPONSE: The Commission disagrees with the commenter. The Commission finds that the conditions for a deposit should be set out in the rule and that any exceptions to the rule should be made by request for a waiver. Therefore, the Commission determines that no change to this proposed rule is necessary as a result of this comment.

COMMENT: Three written comments were received which objected to the requirement in subsection (4)(B) that an annual adjustment of the interest rate occur on October 1. The commenters state that there is not sufficient time between the last business day in September and October 1 to make necessary tariff changes. One commenter suggests that the adjustment occur on January 1 and states that date will coincide with the commenter's current tariff language. A representative for that commenter made similar remarks at the public hearing for the rule. The same commenter also requested that the Commission "include language acknowledging that if a company has an approved tariff setting out the interest rate, the tariff governs."

A second commenter suggested either November 1 or January 1 as possible adjustment dates. The third commenter stated that the interest rate adjustment should be calculated based on the October 1 date but that a new subsection (C) should be added which allows the companies until December 1 to implement the new rate. All of the comments were received from telecommunications companies.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds that the telecommunications industry will need more time to make the necessary changes for its annual interest rate adjustment. Therefore, the Commission will amend this rule to change the annual adjustment date to December 1.

COMMENT: One written comment was received which suggested that subsection (4)(B) be amended to give the company the option of setting the deposit interest rate at nine percent or at the prime lending rate plus one percent. The commenter stated that this would make the proposed rule consistent with tariffs currently on file with the Commission. The commenter also made the same remarks at the public hearing for the rule.

RESPONSE: The Commission finds that the suggested language by the commenter would have the practical result of setting a cap on the interest rate. The companies would have no incentive to ever pay more than the nine percent allowed in the rule. However, if the prime rate dropped below eight percent the company would have an incentive to pay interest at the lower rate. The Commission finds that the best result is for the company and the customer to share the risk of interest rates. By tying the interest rate to the prime rate, both the company and the customer will share equally in the risk. Therefore, the Commission finds that no further

amendment to the proposed rule is necessary as a result of this comment.

COMMENT: Three written comments were received which objected to subsection (4)(G). The commenters stated that the companies are required to maintain a record of the deposit and to respond to the customer within ten days of a request for that information by rule 33.050(4)(F). The commenters further stated that requiring the amount of the deposit to be printed on the monthly bills is burdensome and unnecessary because of the requirements in rule 33.050(4)(F).

RESPONSE AND EXPLANATION OF CHANGE: The Commission has revised subsection (6)(J) of proposed rule 33.040 and added a new section (7). The amended version of proposed rule 33.040 requires the companies to state on the customer's first and last bill the amount of the deposit and the interest accrual rate. Proposed rule 33.040 also requires that the customer's monthly bill show any amount of the customer's deposit that has been credited to the charges stated. There is no longer a requirement that the amount of the deposit be on each monthly bill. The Commission determines that requiring the amount of the deposit held to be reported to the customer is adequately covered in proposed rule 33.040. Therefore, the Commission finds that proposed rule 33.050 is redundant and should be amended by deleting the first sentence of subsection (4)(G).

COMMENT: One written comment was received which objected to subsection (4)(H). The commenter stated that allowing a customer to pay a deposit in installments after service has begun is inconsistent with the purpose of requiring a deposit. The commenter suggested that this rule be withdrawn.

RESPONSE AND EXPLANATION OF CHANGE: The Commission's intent with regard to section (1) was to expand the ability of a company to require a deposit for new service prior to that service being provided. The Commission encourages companies to allow their customers the option of remitting deposits on an installment basis. However, the Commission finds that proposed subsection (4)(H) is inconsistent with proposed section (1) because it requires the company allow the payment of a deposit by installments. The Commission finds that a deposit required as a condition of continued service should still be allowed to be paid by the customer in two installments. Therefore, the Commission will amend subsection (4)(H).

COMMENT: One written comment suggested that section (6) be amended to delete the requirement that a company provide to the Commission upon request the interest rate for deposits.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that this requirement, while not having the potential to cause any great harm to the company, is not necessary. Under the Commission's proposed rule, the Staff of the Commission can readily figure the interest rate for deposits. Therefore, the Commission will amend section (6) as suggested.

COMMENT: One written comment was filed in support of section (7). The commenter supported section (7) because it allows the companies to request advanced payment of some charges and gives the companies flexibility to modify the amount of charges by tariff. However, the commenter suggested that the section be clarified so that the Commission was not required to approve every application of the tariff.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds that the phrase "unless otherwise approved by the commission and specified in the telecommunications company tariff" needs clarification that only the differing amount of an advanced payment must be submitted by tariff to the Commission. The phrase "approved by the Commission" is also being deleted because most tariffs become effective by operation of law without

specific Commission approval. Therefore, affirmative Commission approval is not necessarily given to every tariff. The Commission is also amending the section grammatically by making the word "company" possessive near the end of the section.

COMMENT: One written comment was received which recommended a new section (8) be added as follows: (8) Nothing herein shall be interpreted to prohibit a company from imposing limited usage on toll including, but not limited to, toll restriction, if such plan is contained in a Commission approved tariff. A representative for the same company testified at the public hearing and stated that the purpose of this language is to allow a company's currently effective tariff that provides for toll restriction to continue to be in effect and in compliance with the rule. However, the commenter at the hearing stated that she did not believe the current tariffs would be in violation of proposed rule without this language.

RESPONSE: The subjects of proposed rule 33.050 are deposits and guarantees of payment. The subject of toll restrictions is found in Commission rule 33.070 and is being considered in conjunction with that proposed rule. The Commission finds that no amendment to this proposed rule is necessary as a result of this comment.

COMMENT: One general comment to the Commission's proposed rule 33.050 was received. The commenter stated that the proposed rules are too restrictive on a telecommunications company's ability to require a deposit. The commenter stated that if the telecommunications companies are not able to protect themselves from bad credit risks by securing a deposit, the companies are less likely to serve those high risk customers.

RESPONSE: The Commission must balance the interests of the companies with those of the customers and finds that the restrictions on the requirements for a deposit in these rules are reasonable. Therefore, the Commission determines that no amendment to this proposed rule is necessary as a result of the comment.

COMMENT: One general written comment was received that objected to the rule as proposed because it applies to residential customers and not to business customers. The commenter stated that not all business customers have the resources or economic ability to negotiate with telecommunications companies and should be given the same protections as residential customers.

The commenter also objected to the rule because it would "require a deposit or guarantee as a condition of new service without any criteria for the circumstances when such a deposit or guarantee would be required." The commenter suggested that the requirement of a deposit be limited to unacceptable telephone service credit history and that toll blocks or caps not be required as a condition of local service. The commenter stated that toll blocks should be allowed as an option for the customer in lieu of a deposit.

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 a contract.

In addition, the rule as proposed broadens the scope somewhat for when a company can require a deposit for new service. However, at the same time, other provisions of the proposed rule limit the scope of when a company can require a deposit for continued service. The Commission determines that this balance is reasonable and that no additional changes to this rule are necessary. The Commission did not explore the possibility of toll blocks in lieu of a deposit within the context of this proposed rule. The Commission finds that such a provision would require a separate rulemaking proceeding that would be subject to additional comment from the general public and the industry. Therefore, the

Commission finds that no changes to this proposed rule are required as a result of the comment.

COMMENT: One general comment in support of the proposed rule was received.

RESPONSE: No amendments to this proposed rule are necessary as a result of this comment.

4 CSR 240-33.050 Deposits and Guarantees of Payment for Residential Customers

(1) A telecommunications company may require a deposit or guarantee as a condition of new service. The deposit may be required prior to and no more than thirty (30) calendar days after the telecommunications company actually provides service as stated in the company's tariff.

(4) A deposit shall be subject to the following terms:

(A) It shall not exceed estimated charges for two (2) months' service based on the average bill during the preceding twelve (12) months, or, in the case of new applicants for service, the average monthly bill for new subscribers within a customer class;

(B) It shall bear interest at a rate which is equal to one percent (1%) above the prime lending rate as published in the *Wall Street Journal*. This rate shall be adjusted annually on December 1 using the prime lending rate, as published in the *Wall Street Journal* on the last business day of September of each year, plus one percent (1%). The interest shall be credited annually upon the account of the customer or paid upon the return of the deposit, whichever occurs first. Interest shall not accrue on any deposit after the date on which a reasonable effort has been made to return it to the customer. Records shall be kept of efforts made to return a deposit;

(C) Upon discontinuance or termination, it shall be credited, with accrued interest, to the charge stated on the final bill and the balance, if any, shall be returned to the customer within twenty-one (21) days of the rendition of such final bill;

(D) Upon satisfactory payment of all undisputed charges during the last twelve (12) billing periods, it shall with accrued interest be promptly refunded or credited against charges stated on subsequent bills. A telecommunications company may withhold refund of a deposit pending the resolution of a dispute with respect to charges secured by such deposit;

(E) A telecommunications company shall maintain records which show the name of each customer who has posted a deposit, the current address of such customer, the date and amount of deposit, the date and amount of interest paid and the earliest possible refund date;

(F) A telecommunications company shall upon request provide within ten (10) days a receipt that contains the following information:

1. Name of customer;
2. Address where the service for which the deposit is required will be provided;
3. Place where deposit was received or a designated code which identifies the location;
4. Date when the deposit was received;
5. Amount of the deposit; and
6. The terms which govern retention and refund of the deposit;

(G) A telecommunications company shall maintain a record of the deposit refunded and interest paid on such deposit for a period of at least two (2) years after the refund is made; and

(H) A telecommunications company shall permit a customer to post a deposit required as a condition of continued service in two (2) equal monthly installments or as otherwise agreed upon. A company may bill these installments as a line-item on customer bills.

(6) A guarantor shall be released upon satisfactory payment of all undisputed charges during the last twelve (12) billing periods. Payment of a charge is satisfactory if received prior to the date upon which the charge becomes delinquent, provided it is not in dispute. All telecommunications companies shall provide to the commission upon request credit criteria and screening procedures, and standardized record keeping and verification procedures for uncollectible accounts.

(7) A telecommunications company may request an advance payment for the limited purpose of securing payment of installation charges, if applicable for that customer, and estimated charges for one (1) month of services requested by the customer unless a different amount is otherwise specified in the telecommunications company's tariff.

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 240-33.060 Inquiries is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 1, 1999 (24 MoReg 2359). 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 240-33.060 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 2359-2361). 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: One written comment to section (1) was received. One written comment and one comment at the public hearing held on November 15, 1999, to section (3) were