

4 CSR 240-3.020 Filing Requirements Regarding Utility Company Name Changes is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2004 (29 MoReg 717). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended June 2, 2004, and the commission held a public hearing on this proposed amendment on June 4, 2004. The commission's staff filed comments and testified at the public hearing generally in support of the amendment. Counsel from the Office of the Public Counsel testified generally in support of the amendment.

RESPONSE: No changes have been made to the amendment as a result of the general comments. The commission has previously found that this rule amendment is necessary to carry out the purposes of section 386.250, RSMo.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.250, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-3.510 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2004 (29 MoReg 717-718). Changes have been made to the authority section which is reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended June 2, 2004, and the commission held a public hearing on this proposed amendment on June 4, 2004. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the amendment. Counsel from the Office of the Public Counsel testified generally in support of the amendment. **RESPONSE:** No changes have been made to the amendment as a result of the general comments. The commission has previously found that this rule amendment is necessary to carry out the purposes of sections 386.250, 392.450, 392.451 and 392.455, RSMo.

COMMENT: In her written comments, Natelle Dietrich of the commission's staff noted that the Legislature has explicitly authorized requirements of the nature enacted by this amended rule at sections 392.450, 392.451 and 392.455, RSMo. Accordingly, she recommended referencing these sections in the authority section of the rule. **RESPONSE AND EXPLANATION OF CHANGE:** The commission will add these statutory references to the authority section of the rule.

4 CSR 240-3.510 Filing Requirements for Telecommunications Company Applications for Certificates of Service Authority to Provide Telecommunications Services, Whether Interexchange, Local Exchange or Basic Local Exchange

AUTHORITY: sections 386.250, 392.450, 392.451 and 392.455, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003. Amended: Filed March 19, 2004.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.250, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-3.520 Filing Requirements for Telecommunications Company Applications for Authority to Sell, Assign, Lease or Transfer Assets is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2004 (29 MoReg 718-720). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended June 2, 2004, and the commission held a public hearing on this proposed amendment on June 4, 2004. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the amendment. Counsel from the Office of the Public Counsel testified generally in support of the amendment. **RESPONSE:** No changes have been made to the amendment as a result of the general comments. The commission has previously found that this rule amendment is necessary to carry out the purposes of sections 386.250, RSMo.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.250, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-3.525 Filing Requirements for Telecommunications Company Applications for Authority to Merge or Consolidate is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2004 (29 MoReg 721-723). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended June 2, 2004, and the commission held a public hearing on this proposed amendment on June 4, 2004. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the amendment. Counsel from the Office of the Public Counsel testified generally in support of the amendment. **RESPONSE:** No changes have been made to the amendment as a result of the general comments. The commission has previously found that this rule amendment is necessary to carry out the purposes of section 386.250, RSMo.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.250, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-3.530 Filing Requirements for Telecommunications Company Applications for Authority to Issue Stock, Bonds, Notes and Other Evidences of Indebtedness is **amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2004 (29 MoReg 724-726). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended June 2, 2004, and the commission held a public hearing on this proposed rule on June 4, 2004. Natelle Dietrich on behalf of the commission's staff filed comments and testified at the public hearing in support of the proposed amendment. Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri, filed written comments and testified at the public hearing in this proceeding but made no specific comments directed to this proposed amendment. Michael Dandino of the Office of the Public Counsel testified at the public hearing, generally in support of the proposed amendment.

RESPONSE: No change to this section will be made as a result of the general comments.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT Division 240—Public Service Commission Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.250, RSMo 2000, the commission withdraws a proposed amendment as follows:

4 CSR 240-3.535 Filing Requirements for Telecommunications Company Applications for Authority to Acquire the Stock of a Public Utility is **withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 3, 2004 (29 MoReg 727-729). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: The written public comment period ended June 2, 2004, and the commission held a public hearing on this proposed amendment on June 4, 2004. Natelle Dietrich on behalf of the commission's staff filed comments and testified at the public hearing about the proposed amendment. Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri (SBC), filed written comments and testified on the proposed amendment at the public hearing. SBC, in its written comments, noted that it appears the commission is creating an exemption for competitive local exchange companies with the proposed amendment. During the public hearing, Natelle Dietrich, on behalf of the commission's staff, testified that there appeared to be confusion when the rule was transferred from its former location in Chapter 2 into its current location in Chapter 3. Ms. Dietrich recommended that no change be made to the existing rule.

RESPONSE: The commission has considered the comments and agrees that the intent of the proposed rule was not to create exemptions for competitive telecommunications companies. The existing

rule should not be amended. As a result, the commission is withdrawing this rulemaking.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT Division 240—Public Service Commission Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.250, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-3.560 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 3, 2004 (29 MoReg 730). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended June 2, 2004, and the commission held a public hearing on this proposed rule on June 4, 2004. Natelle Dietrich on behalf of the commission's staff filed comments and testified at the public hearing in support of the proposed rule. Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri (SBC), filed written comments and testified on the proposed rule at the public hearing. Michael Dandino of the Office of the Public Counsel testified at the public hearing generally in support of the proposed rule.

COMMENT: Mimi MacDonald of SBC, in her written comments, noted that it appears the intent of the rule was to establish procedures for telecommunications companies that cease to provide basic local service or interexchange service and sought clarification that the rule does not apply each time a company ceases offering an individual service product. She suggested a modification to the language to provide this clarification. During the public hearing, Natelle Dietrich, on behalf of staff, testified in support of SBC's suggested language change, which clarifies that the rule applies to companies that cease providing basic local or interexchange telecommunications service in Missouri or certain Missouri exchanges.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comments and agrees that the applicability of the proposed rule should be clarified. The proposed rule will be modified as suggested by SBC and supported by staff. The proposed rule will be further modified to include a thirty (30)-day time frame as to the applicability of the proposed rule.

4 CSR 240-3.560 Telecommunications Procedure for Ceasing Operations

(1) All telecommunications companies ceasing operation in Missouri or discontinuing basic local or interexchange telecommunications service to any geographic service area within the state shall provide to the commission at least thirty (30) days prior to cessation or discontinuance:

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT Division 240—Public Service Commission Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.250, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-3.565 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 3, 2004 (29 MoReg 730-731). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended June 2, 2004, and the commission held a public hearing on this proposed rule on June 4, 2004. Natelle Dietrich on behalf of the commission's staff filed comments and testified at the public hearing in support of the proposed rule. Mimi MacDonald, counsel for Southwestern Bell Telephone, LP d/b/a SBC Missouri (SBC), filed written comments and testified on the proposed rule. Michael Dandino of the Office of the Public Counsel testified at the public hearing generally in support of the proposed rule.

COMMENT: Mimi MacDonald, in SBC's written comments, questioned the requirement that a telecommunications company report on the bankruptcy of an affiliate. SBC stated that if the affiliate is a telecommunications provider in Missouri, the proposed rule requires the affiliate to provide notice. SBC went on to state that if the affiliate is not a telecommunications provider in Missouri, there is no need to advise the commission of the bankruptcy, unless it is the parent company of a competitive local exchange carrier that files for bankruptcy. At the public hearing, there were many commission questions concerning the definition of "affiliate." SBC proposed alternative language changing "affiliate" to "parent" or "parent of its parent." SBC expresses concern that the commission would be "inundated" with paperwork depending upon the definition.

RESPONSE AND EXPLANATION OF CHANGE: Since the proposed rule only requires companies to provide to the commission: a notice that the company or an affiliate has filed bankruptcy; the bankruptcy case number, the bankruptcy filing date; the bankruptcy chapter number; and the bankruptcy court, the commission does not find this information burdensome or requiring large amounts of paperwork to be provided to the commission. However, the proposed rule will be further clarified so that only one certificated telecommunications company affiliate need provide the information.

COMMENT: Mimi MacDonald of SBC, in SBC's written comments, suggested section (1) of the proposed rule be modified to require a telecommunications company that files bankruptcy to "immediately" notify the commission.

RESPONSE AND EXPLANATION OF CHANGE: The commission considered this comment and agrees that the proposed rule should be clarified to include a time frame for providing notice to the commission of bankruptcy filings. The time frame will ensure the commission has timely notification of actions impacting the telecommunications landscape of Missouri.

COMMENT: Mimi MacDonald of SBC, in SBC's written comments, raised concerns that section (2) of the rule as proposed could result in customers not receiving telecommunications services for a period of time. SBC suggested the proposed rule be amended to require telecommunications companies to file an application for service authority or transfer of assets within forty-five (45) days after the bankruptcy court enters the order approving the transfer of assets. At the public hearing, Natelle Dietrich, on behalf of the commission's staff, stated that the application process tends to happen much more quickly and suggested the proposed rule be modified to allow no more than ten (10) days after the effective date of the bankruptcy court's order for filing the application. At the public hearing, Ms. MacDonald for SBC responded that bankruptcy orders typically become effective in eleven (11) days. She further commented that companies having to make filings in fifty (50) states may need more time; thus, the recommendation for forty-five (45) days.

RESPONSE AND EXPLANATION OF CHANGE: The commission has reviewed the comments and finds that a more limited time for companies to file service authority or transfer of asset applications is in the public interest to ensure customers receive continuous, uninterrupted service. The proposed rule will be modified as proposed by staff and will ultimately allow a company at least twenty-one (21) days to file the application.

COMMENT: Mimi MacDonald of SBC, in SBC's written comments, raised concerns that section (3) of the rule as proposed does not specify when the telecommunications company filing bankruptcy has to provide the information required by this subsection to the commission. SBC suggested the proposed rule be amended to require the telecommunications company filing bankruptcy to provide the information required in this subsection within seventy-five (75) days of the filing of the petition for bankruptcy relief. At the public hearing, Natelle Dietrich, on behalf of the commission's staff, stated that staff does not object to this suggestion.

RESPONSE AND EXPLANATION OF CHANGE: The commission has reviewed the comments and finds that it is appropriate to modify this subsection to include a time frame for filing the required information. By placing a time frame on the filing requirements, the commission will receive timely notice of the planned disposition of facilities located on the premises of another telecommunications company. This requirement will also provide timely notice to the telecommunications company, on whose premises the company filing bankruptcy has facilities, as to the disposition of that property.

COMMENT: Mimi MacDonald of SBC, in SBC's written comments, raised concerns that subsection (D) of section (3) of the proposed rule fails to ensure that the debtor's personal property will be removed by the debtor and at the debtor's expense. SBC proposed language to require the telecommunications company filing bankruptcy to disconnect and remove its personal property from the premises and dispose of such personal property properly. At the public hearing, Natelle Dietrich, on behalf of the commission's staff, stated that staff does not object to this suggestion.

RESPONSE AND EXPLANATION OF CHANGE: The commission has reviewed the comments and finds that it is appropriate to modify this subsection to include a requirement that the telecommunications company filing bankruptcy be responsible for the removal and disposition of its own property. By adding this requirement, the company that owns the equipment will bear the cost and burden of removing and disposing of its property.

4 CSR 240-3.565 Procedure for Telecommunications Companies that File Bankruptcy

(1) Any telecommunications company certificated in Missouri that files bankruptcy or has an affiliate that files bankruptcy shall, within ten (10) working days of filing bankruptcy, provide to the commission:

(A) A notice that the company or an affiliate has filed bankruptcy including:

1. The bankruptcy case number;
2. The bankruptcy filing date;
3. The bankruptcy chapter number; and
4. The bankruptcy court.

(B) If Missouri certificated telecommunications companies have certificated or non-certificated affiliates that file bankruptcy, only one of the Missouri certificated telecommunications companies need provide to the commission the items in paragraphs (1)(A)1.-4. The responsibility of providing the information in paragraphs (1)(A)1.-4. will fall to the carrier first certificated in Missouri. The certificated company providing these items shall also provide the name(s) of its other Missouri certificated affiliate(s).

(2) If the bankruptcy court approves the transfer of customers to another telecommunications company, a copy of the bankruptcy

order shall be provided to the commission with the application for service authority or application for approval to transfer assets. An application for service authority or application for approval to transfer assets may be filed before, but shall be filed no more than ten (10) working days after the effective date of, the bankruptcy court's order approving the transfer of the customers.

(3) If the telecommunications company filing bankruptcy has telecommunications facilities that are located at the premises of another telecommunications company, the company filing bankruptcy shall, within seventy-five (75) days after filing bankruptcy, provide to the commission:

(A) A statement identifying the telecommunications facilities and their locations;

(B) A statement identifying the entities with an interest in the telecommunications facilities;

(C) A statement describing the disposition of the telecommunications facilities and the entity conducting the disposition of the facilities; and

(D) A statement informing the commission of the date when the telecommunications facilities have been or will be disconnected and removed from the premises of the other telecommunications company and disposed of properly.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee Chapter 50—Certificate of Need Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee (Committee) under section 197.320, RSMo 2000, the Committee amends a rule as follows:

19 CSR 60-50.300 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 17, 2004 (29 MoReg 846). The section with changes is reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held June 17, 2004. The Certificate of Need Program (CONP) staff, on behalf of the Committee, received three (3) comments on this rule.

COMMENT: J. David Bechtold, representing the Missouri Health Care Association, commented that, in section (9), introduction and placement of the phrase "incurred over a twelve (12)-month period" caused confusion and should not be amended.

RESPONSE AND EXPLANATION OF CHANGE: This section was modified by deleting it from the confusing location and moved to the end of "costs" being referenced.

COMMENT: J. David Bechtold, representing the Missouri Health Care Association, asserted that the Committee did not recognize the cost to the Medicaid Program, which they believed would exceed \$500 in the aggregate. His calculations would result in a claimed public agency impact of \$1,423.50 in additional Medicaid cost for every nonapplicability or approved Medicaid bed. He also postulated that there would be an additional private entity cost which would exceed \$500 in the aggregate; and that this cost represented revenue lost by individual providers due to the construction of unneeded facilities which would in turn reduce the overall occupancy of existing facilities. His calculated example for unneeded, but approved, nursing homes would result in a claimed private entity impact of \$35,405

in lost revenue to an existing 100-bed nursing home for every percentage point drop in occupancy that would occur.

RESPONSE: The adoption of this rule would not require or result in an expenditure of public funds by, or a reduction of public revenues for, any other agency of state government or any political subdivision thereof, when compared to expenses and revenues for these entities prior to adoption of this rule. The Committee's actions do not create additional Medicaid expenses. As for service utilization, it is disingenuous to couple any of the Committee's actions with declining facility occupancy when other countervailing factors, such as the availability of alternative care, changing reimbursement standards and increasing elderly population, so strongly influence institutional selection and use. It is also important to note that the previous Chairman of the Joint Committee on Administrative Rules carefully reviewed all of these proposed changes, and concurred that they would have public and private fiscal notes under \$500, similar to the three other CON rules approved in 2003. No changes have been made as a result of this comment.

COMMENT: Thomas R. Piper, representing the CONP, commented that, in section (9), the phrase "incurred over a twelve (12)-month period" is incorrectly placed and should be moved to after the phrase "and any other capitalizable costs".

RESPONSE AND EXPLANATION OF CHANGE: This section was modified accordingly.

19 CSR 60-50.300 Definitions for the Certificate of Need Process

(9) Health care facility expenditure includes the capital value of new construction or renovation costs, architectural/engineering fees, equipment not in the construction contract, land acquisition costs, consultants'/legal fees, interest during construction, predevelopment costs as defined in section 197.305(13), RSMo, in excess of one hundred fifty thousand dollars (\$150,000), any existing land and building converted to medical use for the first time, and any other capitalizable costs incurred over a twelve (12)-month period as listed on the "Proposed Project Budget" form MO 580-1863.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee Chapter 50—Certificate of Need Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee (Committee) under section 197.320, RSMo 2000, the Committee amends a rule as follows:

19 CSR 60-50.400 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 17, 2004 (29 MoReg 846-847). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held June 17, 2004. The Certificate of Need Program (CONP) staff, on behalf of the Committee, received four (4) comments on this rule. In addition, the Joint Committee on Administrative Rules held a two-part hearing on August 24 and 25, 2004, where several recommendations were made.

COMMENT: J. David Bechtold, representing the Missouri Health Care Association, commented that section (3) is inconsistent with statute and other rules as stated, and suggested that the phrase "if the capital expenditure for such bed expansion or replacement exceeds