

SECOND REGULAR SESSION

HOUSE BILL NO. 1303

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES RECTOR (Sponsors), EMERY, CORCORAN, JACKSON, STEVENSON, VIEBROCK, BIVINS, WAGNER, SPRENG, DEMPSEY, WARD, HUNTER, SCHLOTTACH, SKAGGS, SMITH (118), PAGE, SMITH (14), MUNZLINGER, LUETKEMEYER, JONES, HENKE, SEIGFREID AND RANSBALL (Co-sponsors).

Read 1st time January 28, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3749L.011

AN ACT

To repeal sections 386.020, 392.220, and 392.245, RSMo, and to enact in lieu thereof four new sections relating to telecommunications price flexibility.

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

Section A. Sections 386.020, 392.220, and 392.245, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 386.020, 392.220, 392.245, and
3 392.405, to read as follows:

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;

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

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) **"Central office based broadband service", the placement of a digital subscriber**
44 **line access multiplexer or similar equipment in a central office that permits transmission**
45 **to or from the Internet in excess of one hundred forty-four kilobytes per second over all**
46 **copper wires to customers located within approximately fourteen thousand cable feet of**
47 **the central office;**

48 (8) "Commission", the "Public Service Commission" hereby created;

49 [(8)] (9) "Commissioner", one of the members of the commission;

50 [(9)] (10) "Competitive telecommunications company", a telecommunications company
51 which has been classified as such by the commission pursuant to section 392.361, RSMo;

52 [(10)] (11) "Competitive telecommunications service", a telecommunications service
53 which has been classified as such by the commission pursuant to section 392.361, RSMo, or
54 which has become a competitive telecommunications service pursuant to section 392.370,
55 RSMo;

56 [(11)] (12) "Corporation" includes a corporation, company, association and joint stock
57 association or company;

58 [(12)] (13) "Customer-owned pay telephone", a privately owned telecommunications
59 device that is not owned, leased or otherwise controlled by a local exchange telecommunications
60 company and which provides telecommunications services for a use fee to the general public;

61 [(13)] (14) "Effective competition" shall be determined by the commission based on:

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

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

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

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

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

71 [(14)] (15) "Electric plant" includes all real estate, fixtures and personal property
72 operated, controlled, owned, used or to be used for or in connection with or to facilitate the
73 generation, transmission, distribution, sale or furnishing of electricity for light, heat or power;
74 and any conduits, ducts or other devices, materials, apparatus or property for containing, holding
75 or carrying conductors used or to be used for the transmission of electricity for light, heat or
76 power;

77 [(15)] (16) "Electrical corporation" includes every corporation, company, association,
78 joint stock company or association, partnership and person, their lessees, trustees or receivers
79 appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation
80 generating electricity solely for railroad, light rail or street railroad purposes or for the use of its
81 tenants and not for sale to others, owning, operating, controlling or managing any electric plant
82 except where electricity is generated or distributed by the producer solely on or through private
83 property for railroad, light rail or street railroad purposes or for its own use or the use of its
84 tenants and not for sale to others;

85 [(16)] (17) "Exchange", a geographical area for the administration of

86 telecommunications services, established and described by the tariff of a telecommunications
87 company providing basic local telecommunications service;

88 [(17)] **(18)** "Exchange access service", a service provided by a local exchange
89 telecommunications company which enables a telecommunications company or other customer
90 to enter and exit the local exchange telecommunications network in order to originate or
91 terminate interexchange telecommunications service;

92 [(18)] **(19)** "Gas corporation" includes every corporation, company, association, joint
93 stock company or association, partnership and person, their lessees, trustees or receivers
94 appointed by any court whatsoever, owning, operating, controlling or managing any gas plant
95 operating for public use under privilege, license or franchise now or hereafter granted by the state
96 or any political subdivision, county or municipality thereof;

97 [(19)] **(20)** "Gas plant" includes all real estate, fixtures and personal property owned,
98 operated, controlled, used or to be used for or in connection with or to facilitate the manufacture,
99 distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power;

100 [(20)] **(21)** "Heating company" includes every corporation, company, association, joint
101 stock company or association, partnership and person, their lessees, trustees or receivers,
102 appointed by any court whatsoever, owning, operating, managing or controlling any plant or
103 property for manufacturing and distributing and selling, for distribution, or distributing hot or
104 cold water, steam or currents of hot or cold air for motive power, heating, cooking, or for any
105 public use or service, in any city, town or village in this state; provided, that no agency or
106 authority created by or operated pursuant to an interstate compact established pursuant to section
107 70.370, RSMo, shall be a heating company or subject to regulation by the commission;

108 [(21)] **(22)** "High-cost area", a geographic area, which shall follow exchange boundaries
109 and be no smaller than an exchange nor larger than a local calling scope, where the cost of
110 providing basic local telecommunications service as determined by the commission, giving due
111 regard to recovery of an appropriate share of joint and common costs as well as those costs
112 related to carrier of last resort obligations, exceeds the rate for basic local telecommunications
113 service found reasonable by the commission;

114 [(22)] **(23)** "Incumbent local exchange telecommunications company", a local exchange
115 telecommunications company authorized to provide basic local telecommunications service in
116 a specific geographic area as of December 31, 1995, or a successor in interest to such a company;

117 [(23)] **(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;

267 [(54)] (55) "Telephone cooperative", every corporation defined as a telecommunications
268 company in this section, in which at least ninety percent of those persons and corporations
269 subscribing to receive local telecommunications service from the corporation own at least ninety
270 percent of the corporation's outstanding and issued capital stock and in which no subscriber owns
271 more than two shares of the corporation's outstanding and issued capital stock;

272 [(55)] (56) "Traffic aggregator", any person, firm, partnership or corporation which
273 furnishes a telephone for use by the public and includes, but is not limited to, telephones located
274 in rooms, offices and similar locations in hotels, motels, hospitals, colleges, universities, airports
275 and public or customer-owned pay telephone locations, whether or not coin operated;

276 [(56)] (57) "Transitionally competitive telecommunications company", an interexchange
277 telecommunications company which provides any noncompetitive or transitionally competitive
278 telecommunications service, except for an interexchange telecommunications company which
279 provides only noncompetitive telecommunications service;

280 [(57)] (58) "Transitionally competitive telecommunications service", a
281 telecommunications service offered by a noncompetitive or transitionally competitive
282 telecommunications company and classified as transitionally competitive by the commission
283 pursuant to section 392.361 or 392.370, RSMo;

284 [(58)] (59) "Water corporation" includes every corporation, company, association, joint
285 stock company or association, partnership and person, their lessees, trustees, or receivers
286 appointed by any court whatsoever, owning, operating, controlling or managing any plant or
287 property, dam or water supply, canal, or power station, distributing or selling for distribution, or
288 selling or supplying for gain any water;

289 [(59)] (60) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
290 headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and
291 personal property, owned, operated, controlled or managed in connection with or to facilitate the
292 diversion, development, storage, supply, distribution, sale, furnishing or carriage of water for
293 municipal, domestic or other beneficial use.

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]~~ **twenty** days' notice to the commission, which
29 notice shall plainly state the changes proposed to be made in the schedule then in force and the
30 time when the changed rate, charge or rental shall go into effect; and all proposed changes shall
31 be shown by filing new schedules or shall be plainly indicated upon the schedules filed and in
32 force 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]~~ **twenty** days' notice, under
34 such 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 days from the proposed effective
55 date of such proposed rate or charge. This subsection shall not be applicable to any new price
56 or method of pricing for a service presently being offered by any telecommunications company
57 to its Missouri customers. Upon proposing a rate or charge for a telecommunications service
58 which has not previously been provided by a telecommunications company to its Missouri
59 customers, the offeror must file with the commission its justification for considering such
60 offering a new service and such other information as may be required by rule or regulation, and
61 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 suspension
71 period, but any such decision by the commission issued after the maximum sixty-day suspension
72 period shall be prospective in nature. The commission shall expedite proceedings under this
73 subsection in order to facilitate the rapid introduction of new telecommunications products and
74 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]~~ **twenty**
78 days prior to the date for implementation of such change. Nothing contained in this section shall
79 be construed as conferring jurisdiction upon the commission over the rates charged by a
80 telephone cooperative for providing telecommunications service within an exchange or within

81 a local 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.

 392.245. 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. As used in this chapter, "price cap regulation" shall mean establishment of
4 maximum allowable prices for telecommunications services offered by an incumbent local
5 exchange telecommunications company, which maximum allowable prices shall not be subject
6 to increase except as otherwise provided in this section.

7 2. A large incumbent local exchange telecommunications company shall be subject to
8 regulation under this section upon a determination by the commission that an alternative local
9 exchange telecommunications company has been certified to provide basic local
10 telecommunications service and is providing such service in any part of the large incumbent
11 company's service area. A small incumbent local exchange telecommunications company may
12 elect to be regulated under this section upon providing written notice to the commission if an
13 alternative local exchange telecommunications company has been certified to provide basic local
14 telecommunications service and is providing such service in any part of the small incumbent
15 company's service area, and the incumbent company shall remain subject to regulation under this
16 section after such election.

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

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

28 telecommunications services of a large, incumbent local exchange telecommunications company
29 regulated under this section shall not be changed prior to January 1, 2000. Thereafter, the
30 maximum allowable prices for exchange access and basic local telecommunications services of
31 an incumbent local exchange telecommunications company shall be annually changed by one of
32 the following methods:

33 (a) By the change in the telephone service component of the Consumer Price Index
34 (CPI-TS), as published by the United States Department of Commerce or its successor agency
35 for the preceding twelve months; or

36 (b) Upon request by the company and approval by the commission, by the change in the
37 Gross Domestic Product Price Index (GDP-PI), as published by the United States Department
38 of Commerce or its successor agency for the preceding twelve months, minus the productivity
39 offset established for telecommunications service by the Federal Communication Commission
40 and adjusted for exogenous factors;

41 (2) The commission shall approve a change to a maximum allowable price filed pursuant
42 to paragraph (a) of subdivision (1) of this subsection within forty-five days of filing of notice by
43 the local exchange telecommunications company. An incumbent local exchange
44 telecommunications company shall file a tariff to reduce the rates charged for any service in any
45 case in which the current rate exceeds the maximum allowable price established under this
46 subsection.

47 (3) As a part of its request under paragraph (b) of subdivision (1) of this subsection, a
48 company may seek commission approval to use a different productivity offset in lieu of the
49 productivity offset established by the Federal Communication Commission. An adjustment
50 under paragraph (b) of subdivision (1) of this subsection shall not be implemented if the
51 commission determines, after notice and hearing to be conducted within forty-five days of the
52 filing of the notice of a change to a maximum allowable price, that it is not in the public interest.
53 In making such a determination, the commission shall consider the relationship of the proposed
54 price of service to its cost and the impact of competition on the incumbent local exchange
55 telecommunications company's intrastate revenues from regulated telecommunications services.
56 Any adjustments for exogenous factors shall be allocated to the maximum allowable prices for
57 exchange access and basic local telecommunications service in the same percentage as the
58 revenues for such company bears to such company's total revenues from basic local, nonbasic
59 and exchange access services for the preceding twelve months.

60 (4) For the purposes of this section, the term "exogenous factor" shall mean a cumulative
61 impact on a local exchange telecommunications company's intrastate regulated revenue
62 requirement of more than three percent, which is attributable to federal, state or local government
63 laws, regulations or policies which change the revenue, expense or investment of the company,

64 and the term "exogenous factor" shall not include the effect of competition on the revenue,
65 expense or investment of the company nor shall the term include any assessment made under
66 section 392.248.

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

72 5. Each telecommunications service of an incumbent local exchange telecommunications
73 company shall be classified as competitive in any exchange in which at least one alternative local
74 exchange telecommunications company has been certified under section 392.455 and has
75 provided basic local telecommunications service in that exchange for at least five years, unless
76 the commission determines, after notice and a hearing, that effective competition does not exist
77 in the exchange for such service. The commission shall, from time to time, on its own motion
78 or motion by an incumbent local exchange telecommunications company, investigate the state
79 of competition in each exchange where an alternative local exchange telecommunication
80 company has been certified to provide local exchange telecommunications service and shall
81 determine, no later than five years following the first certification of an alternative local
82 exchange telecommunication company in such exchange, whether effective competition exists
83 in the exchange for the various services of the incumbent local exchange telecommunications
84 company. If the commission determines that effective competition exists in the exchange, the
85 local exchange telecommunications company may thereafter adjust its rates for such competitive
86 services upward or downward as it determines appropriate in its competitive environment. If the
87 commission determines that effective competition does not exist in the exchange, the provisions
88 of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the maximum
89 allowable prices established by the provisions of subsections 4 and 11 of this section shall
90 continue to apply. The commission shall from time to time, but no less than every five years,
91 review the state of competition in those exchanges where it has previously found the existence
92 of effective competition, and if the commission determines, after hearing, that effective
93 competition no longer exists for the incumbent local exchange telecommunications company in
94 such exchange, it shall reimpose upon the incumbent local exchange telecommunications
95 company, in such exchange, the provisions of paragraph (c) of subdivision (2) of subsection 4
96 of section 392.200 and the maximum allowable prices established by the provisions of
97 subsections 4 and 11 of this section, and, in any such case, the maximum allowable prices
98 established for the telecommunications services of such incumbent local exchange
99 telecommunications company shall reflect all index adjustments which were or could have been

100 filed from all preceding years since the company's maximum allowable prices were first adjusted
101 pursuant to subsection 4 or 11 of this section.

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

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

108 8. An incumbent local exchange telecommunications company regulated under this
109 section may reduce intrastate access rates, including carrier common line charges, subject to the
110 provisions of subsection 9 of this section, to a level not to exceed one hundred fifty percent of
111 the company's interstate rates for similar access services in effect as of December thirty-first of
112 the year preceding the year in which the company is first subject to regulation under this section.
113 [Absent commission action under subsection 10 of this section,] An incumbent local exchange
114 telecommunications company regulated under this section [shall have four years from the date
115 the company becomes subject to regulation under this section to make the adjustments
116 authorized] **is authorized to be able to make up to six annual adjustments as provided** under
117 this subsection and subsection 9 of this section. Nothing in this subsection shall preclude an
118 incumbent local exchange telecommunications company from establishing its intrastate access
119 rates at a level lower than one hundred fifty percent of the company's interstate rates for similar
120 access services in effect as of December thirty-first of the year preceding the year in which the
121 company is first subject to regulation under this section.

122 9. Other provisions of this section to the contrary notwithstanding and no earlier than
123 January 1, 1997, the commission shall allow an incumbent local exchange telecommunications
124 company regulated under this section which reduces its intrastate access service rates pursuant
125 to subsection 8 of this section to offset the revenue loss resulting from [the first year's] **each**
126 access service rate reduction by increasing its monthly maximum allowable prices applicable to
127 basic local exchange telecommunications services by an amount not to exceed one dollar fifty
128 cents **per annual adjustment**. A large incumbent local exchange telecommunications company
129 shall not increase its monthly rates applicable to basic local telecommunications service under
130 this subsection unless it also reduces its rates for intraLATA interexchange telecommunications
131 services by at least ten percent. No later than one year after the date the incumbent local
132 exchange telecommunications company becomes subject to regulation under this section, the
133 commission shall complete an investigation of the cost justification for the reduction of intrastate
134 access rates and the increase of maximum allowable prices for basic local telecommunications
135 service. If the commission determines that the company's monthly maximum allowable average

136 statewide prices for basic local telecommunications service after adjustment pursuant to this
137 subsection will be equal to or less than the long run incremental cost, as defined in section
138 386.020, RSMo, of providing basic local telecommunications service and that the company's
139 intrastate access rates after adjustment pursuant to this subsection will exceed the long run
140 incremental cost, as defined in section 386.020, RSMo, of providing intrastate access services,
141 the commission shall allow the company to offset the revenue loss resulting from the remaining
142 three-quarters of the total needed to bring that company's intrastate access rates to one hundred
143 fifty percent of the interstate level by increasing the company's monthly maximum allowable
144 prices applicable to basic local telecommunications service by an amount not to exceed one
145 dollar fifty cents on each of the next three anniversary dates thereafter; otherwise, the
146 commission shall order the reduction of intrastate access rates and the increase of monthly
147 maximum allowable prices for basic local telecommunications services to be terminated at the
148 levels the commission determines to be cost-justified. The total revenue increase due to the
149 increase to the monthly maximum allowable prices for basic local telecommunications service
150 shall not exceed the total revenue loss resulting from the reduction to intrastate access service
151 rates.

152 10. Any telecommunications company whose intrastate access costs are reduced pursuant
153 to subsections 8 and 9 of this section **or under subsection 3 of section 392.405** shall decrease
154 its rates for intrastate toll telecommunications service to flow through such reduced costs to its
155 customers. The commission may permit a telecommunications company to defer a rate reduction
156 required by this subdivision until such reductions, on a cumulative basis, reach a level that is
157 practical to flow through to its customers.

158 11. The maximum allowable prices for nonbasic telecommunications services of a small,
159 incumbent local exchange telecommunications company regulated under this section shall not
160 be changed until twelve months after the date the company is subject to regulation under this
161 section or, on an exchange-by-exchange basis, until an alternative local exchange
162 telecommunications company is certified and providing basic local telecommunications service
163 in such exchange, whichever is earlier. The maximum allowable prices for nonbasic
164 telecommunications services of a large, incumbent local exchange telecommunications company
165 regulated under this section shall not be changed until January 1, 1999, or on an
166 exchange-by-exchange basis, until an alternative local exchange telecommunications company
167 is certified and providing basic local telecommunications service in such exchange, whichever
168 is earlier. Thereafter, the maximum allowable prices for nonbasic telecommunications services
169 of an incumbent local exchange telecommunications company may be annually increased by up
170 to eight percent for each of the following twelve-month periods upon providing notice to the
171 commission and filing tariffs establishing the rates for such services in such exchanges at such

172 maximum allowable prices. This subsection shall not preclude an incumbent local exchange
173 telecommunications company from proposing new telecommunications services and establishing
174 prices for such new services. An incumbent local exchange telecommunications company may
175 change the rates for its services, consistent with the provisions of **subsections 2 to 5 of** section
176 392.200, but not to exceed the maximum allowable prices, by filing tariffs which shall be
177 approved by the commission within thirty days, provided that any such rate is not in excess of
178 the maximum allowable price established for such service under this section.

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

**392.405. 1. The services, other than exchange access service, of a large incumbent
2 local exchange telecommunications company shall be classified as competitive within an
3 exchange if the company provides central office based broadband service within the
4 exchange, and at least three telecommunications companies are providing
5 telecommunications service within the exchange. For purposes of this section, commercial
6 mobile radio service providers shall be considered as telecommunications companies
7 providing telecommunications service.**

8 **2. The commission shall approve tariffs designating all such services in an exchange
9 as competitive within twenty days after a tariff filing by the large incumbent local exchange
10 telecommunications company declaring such services as competitive under this section.
11 Exchange access services of a large incumbent local exchange telecommunications company
12 whose other services within an exchange are classified as competitive under this section
13 shall be regulated under section 392.245.**

14 **3. A large incumbent local exchange telecommunications company whose services
15 within an exchange are classified as competitive under this section may, after classification,
16 increase or decrease its rates for those competitive services as it determines appropriate,
17 consistent with subsections 2 to 5 of section 392.200, upon filing tariffs that shall be
18 approved by the commission within the timelines identified in section 392.500.**

19 **4. If a large incumbent local exchange telecommunications company, whose services
20 within an exchange are classified as competitive under this section, increases its rates for
21 residential basic local telecommunications service in that exchange during the first two
22 years after receiving competitive classification under this section, such large incumbent
23 local exchange telecommunications company shall also reduce its maximum allowable rates
24 for exchange access service on a revenue neutral basis.**