

FILED
January 30, 2008
Data Center
Missouri Public
Service Commission



Robin Carnahan
Secretary of State

**Administrative Rules Division
Rulemaking Transmittal Receipt**

Rule ID: 8255
Date Printed: 1/25/2008
Rule Number: 4 CSR 240-33.160
Rulemaking Type: Proposed Amendment
Date Submitted to Administrative Rules Division: 1/25/2008
Date Submitted to Joint Committee on Administrative Rules: 1/25/2008

Name of Person to Contact with questions concerning this rule:

Content: Cully Dale	Phone: 1-4255	Email: cully.dale@psc.mo.gov	Fax:
RuleDataEntry:	Phone:	Email:	Fax:

Included with Rulemaking:

Cover Letter	1/25/2008
Affidavit for public cost	1/25/2008

Print Close

Robin Carnahan

**Secretary of State
Administrative Rules Division**

RULE TRANSMITTAL

Administrative Rules Stamp

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**SECRETARY OF STATE
ADMINISTRATIVE RULES**

Rule Number 4 CSR 240-33.160

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Cully Dale Phone 573-751-4255 FAX

Email address cully.dale@psc.mo.gov

Data Entry same Phone FAX

Email address

Interagency mailing address Public Serv. Comm'n, 9th Fl., Governor Ofc. Bldg., Jeff. City

TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☒ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☒ Order of Rulemaking

Effective Date for the Order

☐ Statutory 30 days OR Specific date

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☐ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Small Business Regulatory
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**REGULATORY FAIRNESS
BOARD**

JCAR Stamp

JOINT COMMITTEE ON

JAN 25 2008

ADMINISTRATIVE RULES



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

TERRY JARRETT

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

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573-751-3234
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WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration

ROBERT SCHALLENBERG
Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

January 25, 2008

Honorable Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Dear Secretary Carnahan:

Re: Proposed Rule 4 CSR 240-33.160

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rule lawfully submitted by the Missouri Public Service Commission for filing on this 25th day of January, 2008.

Statutory Authority: Sections 386.040, 386.250, 392.185(9) and 392.470 RSMo 2000.

Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rulemaking in light of the United States Supreme court decision in *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886 (1992). Pursuant to that order, I have undertaken a "takings analysis" of the above-referenced proposed rulemaking. In *Lucas*, the Court held that state regulation depriving an owner of real property of all economically beneficial use of that property constitutes a "taking" under the Fifth and Fourteenth Amendments of the U.S. Constitution, for which the property owner must be compensated. Adopting the proposed rulemaking does not implicate the takings clause of the U.S. Constitution, because the proposed rulemaking does not involve the taking of real property.

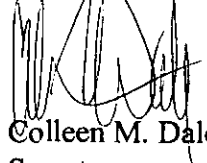
Section 536.300, RSMo Supp. 2006, requires state agencies to "determine whether the proposed rule amendments affect small businesses and, if so, the availability and practicability of less-restrictive alternatives that could be implemented to achieve the same results of the proposed rulemaking." Executive Order 03-15, which similarly addresses the impacts of rulemakings on small businesses, defines a small business to be "a for-profit enterprise consisting of fewer than one hundred full- or part-time employees" and elaborates

that a proposed rule "affects" a small business if it "impose[s] any potential or actual requirement" that "will cause direct and significant economic burden upon a small business, or that is directly related to the formation, operation, or expansion of a small business." Section 536.300.3, RSMo Supp. 2006, in part, provides: "If the state agency determines that its proposed rule does not affect small business, the state agency shall so certify this finding in the transmittal letter to the secretary of state, stating that it has determined that such proposed rule will not have an economic impact on small business . . ."

Proposed rule 4 CSR 240-33.160 does not impose requirements that have an economic impact on small businesses, that "will cause direct and significant economic burden upon a small business, or that is directly related to the formation, operation, or expansion of a small business." The Commission certifies that it has determined that the proposed rule will not have an economic impact on small businesses.

If there are any questions, please contact: Colleen M. Dale, Secretary
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-4255
cully.dale@psc.mo.gov

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over the printed name and title.

Colleen M. Dale
Secretary

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SECRETARY OF STATE
ADMINISTRATIVE RULES

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

Proposed Amendment

4 CSR 240-33.160 Customer Proprietary Network Information

PURPOSE: *This amendment modifies the procedures by which telecommunications companies may use, disclose, or permit access to customer proprietary network information consistent with recent federal modifications. The proposed amendment also adds a requirement for telecommunications carriers to notify the Missouri Public Service Commission of CPNI security breaches.*

(1) Definitions. For the purposes of 4 CSR 240-33.160, the following definitions are applicable:

(A) Affiliate is any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision, which directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated telecommunications company;

(B) Agent is a person or entity who is, authorized to act on behalf of a telecommunications company or its affiliates;

(C) Breach has occurred when a person, without authorization or exceeding authorization, has gained access to, used, or disclosed CPNI.

[Remaining subsections renumbered accordingly.]

(2) Use of CPNI Without Customer Approval.

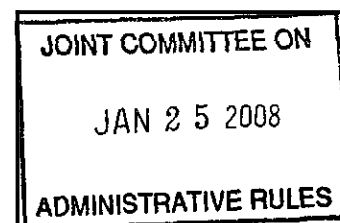
(C) Approval not required for use of customer proprietary network information.

4. A telecommunications company may use, disclose, or permit access to customer information to public safety answering points (PSAPs) if the PSAP claims it needs the information to respond to an emergency. Information to be released shall be limited to subscriber list information as defined in 4 CSR 240-33.160(1)~~(R)~~ (S).

(3) Approval Required for Use of CPNI.

(A) Use of Opt-Out and Opt-In Approval Process.

1. **A telecommunications company shall obtain opt-in approval from a customer before disclosing that customer's CPNI to the telecommunications company's joint venture partners or independent contractors. Any such disclosure to joint venture partners and independent contractors shall be subject to the safeguards set forth in paragraph (3)(A)3 below.**



2. A telecommunications company may, subject to opt-out approval or opt-in approval, use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer. A telecommunications company may, subject to opt-out approval or opt-in approval, disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents[;] **and** its affiliates that provide communications-related services [~~;-and its joint venture partners and independent contractors~~]. A telecommunications company may also permit such persons or entities to obtain access to such CPNI for such purposes. Any such disclosure to or access provided to agents[;] **and** affiliates [~~;-joint venture partners and independent contractors~~] shall be subject to the safeguards set forth in paragraph (3)(A)[2] 3. below. A telecommunications company may elect not to apply the safeguards set forth in paragraph (3)(A)[2] 3. below [~~to its agents or affiliates~~], however, if the telecommunications company so elects, then it shall be held responsible if its agents or affiliates further use, allow access to, or disclose customer CPNI.

[2] 3. Agents/affiliates/joint venture/contractor safeguards. A telecommunications company that discloses or provides access to CPNI to its agents, affiliates, joint venture partners or independent contractors **pursuant to paragraphs (3)(A)1 and 2 above** shall enter into confidentiality agreements with those agents, affiliates, joint venture partners or independent contractors that comply with the following requirements. The confidentiality agreement shall:

A. Require that those agents, affiliates, joint venture partners or independent contractors use the CPNI only for the purpose of marketing or providing the communications-related services for which that CPNI has been provided;

B. Disallow the agents, affiliates, joint venture partners or independent contractors from using, allowing access to, or disclosing the CPNI to any other party, unless required to make such disclosure under force of law; and

C. Require that the agents, affiliates, joint venture partners and independent contractors have appropriate protections in place to ensure the ongoing confidentiality of customers' CPNI.

(4) Customer Notification Requirements.

(C) Content of Notice. Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose, or permit access to, the customer's CPNI.

8. A telecommunications company also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer **and subject to the appropriate authentication procedures as described in Section (5) below.**

(5) Requirements Specific to Customer-Initiated Contacts

(A) Telecommunications companies shall properly authenticate a customer prior to disclosing CPNI based on customer-initiated contacts. Telecommunications companies shall take reasonable measures to discover and protect against attempts

to gain unauthorized access to CPNI and shall, at a minimum, follow the requirements outlined below:

1. Telephone access to CPNI

A. Telecommunications companies shall only disclose call detail information over the telephone if the customer first provides the company with a password as described in (5)(B) below.

(I) Password cannot be prompted by the company asking for readily available biographical information or account information;

(II) If the customer does not provide a password, the company shall only disclose call detail information by sending it to the customer's address of record or by calling the customer at the telephone number of record;

(III) If the customer is able to provide call detail information to the company without the company's assistance then the company is permitted to discuss the call detail information provided by the customer.

2. Online access to CPNI

A. A telecommunications company shall authenticate a customer without the use of readily available biographical information or account information prior to allowing customer access to CPNI related to a telecommunications service account.

B. Once authenticated, the customer shall only obtain online access to CPNI related to a telecommunications service account through a password as described in (5)(B) below.

(I) Password cannot be prompted by the company asking for readily available biographical information or account information.

3. In-store access to CPNI

A. A telecommunications company may disclose CPNI to a customer who, at the company's retail location, first presents to the telecommunications company or its agent a valid photo ID matching the customer's account information.

(B) Establishment of a Password and Back-up Authentication Methods for Lost or Forgotten Passwords.

1. To establish a password, a telecommunications company shall authenticate the customer without the use of readily available biographical information or account information.

2. Telecommunications companies may create a back-up customer authentication method in the event of a lost or forgotten password, but such back-up customer authentication method may not prompt the customer for readily available biographical or account information.

3. If a customer cannot provide the correct password or the correct response for the back-up customer authentication method, the customer shall establish a new password.

(C) Notification of Account Changes

1. Telecommunications companies shall notify customers immediately whenever a password, customer response to a back-up means of authentication for lost or forgotten passwords, online account, or address of record is created or changed.

A. Notification is not required when the customer initiates service, including the selection of a password at service initiation.

B. Notification may be through a company-originated voicemail or text message to the telephone number of record or by mail to the address of record.

C. Notification shall not reveal the changed information to be sent to the new account information.

(D) Business Customer Exemption.

1. Telecommunications companies may bind themselves contractually to authentication regimes other than those described in (5)(A)-(C) for services they provide to their business customers that have both a dedicated account representative and a contract that specifically addresses the carriers' protection of CPNI.

Sections (5) and (6) are renumbered as sections (6) and (7).

(8) CPNI Security Breaches

(A) A telecommunications company shall notify the Missouri Public Service Commission of a breach of its customers' CPNI as soon as practicable, and in no event later than seven (7) business days, after reasonable determination of the breach. The telecommunications company shall electronically notify the Executive Director, the Director of Operations, the General Counsel and the Manager of the Telecommunications Department.

(B) All telecommunications companies shall maintain a record, electronically or in some other manner, of any breaches discovered, notifications made pursuant to Section (8)(A) and notifications made to customers. The record shall include, if available, dates of discovery and notification, a detailed description of the CPNI that was the subject of the breach and the circumstances of the breach. Telecommunications companies shall retain the record for a minimum of two (2) years.

AUTHORITY: sections 386.040, 386.250, 392.185(9), 392.470, RSMo 2000. Original rule filed March 30, 2004, effective Nov. 30, 2004.*

**Original authority: 386.040, RSMo 1939; 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; 392.185, RSMo 1996; and 392.470, RSMo 1987.*

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Public Service Commission. Cully Dale, Secretary of the Commission. PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register and should include a reference to commission Case No. TX-2008-0090. Comments may also be submitted via a filing using the commission's electronic filing and information system and <http://www.psc.mo.gov/efis.asp>. A public hearing regarding this proposed rule is scheduled for April 3, 2008 at 10:00 am in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

**AFFIDAVIT
(PUBLIC COST)**

STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Michael Mills, Deputy Director of the Department of Economic Development, first being duly sworn, on my oath state that it is my opinion that the attached fiscal note for proposed rule 4 CSR 240-23.010 is a reasonably accurate estimate.

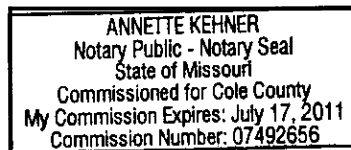


Michael Mills
Deputy Director
Department of Economic Development

Subscribed and sworn to before me this 14th day of January, 2008,
I am commissioned as a notary public within the County of COLE
State of Missouri, and my commission expires on 17 July 2011.



NOTARY PUBLIC



Small Business Regulator Fairness Board

Small Business Impact Statement

Date: September 25, 2007

Rule Number: 4 CSR 240-33.160

Name of Agency Preparing Statement: Missouri Public Service Commission

Name of Person Preparing Statement: Natelle Dietrich

Phone Number: 573-751-7427

Email: Natelle.dietrich@psc.mo.gov

Name of Person Approving Statement: Colleen Dale

Please describe the methods your agency considered or used to reduce the impact on small businesses (*examples: consolidation, simplification, differing compliance, differing reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating technique*).

Since the requirements largely mirror federal requirements it is not anticipated that small businesses will be adversely affected by the proposed amendment.

Please explain how your agency has involved small businesses in the development of the proposed rule.

Since the requirements largely mirror federal requirements it is not anticipated that small businesses will be adversely affected. Therefore, small businesses were not involved in the development of the proposed amendment at this point.

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.

None expected.

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

Incumbent local exchange carriers and competitive local exchange carriers will be affected by the proposed amendment. Since the requirements largely mirror federal requirements it is not anticipated that small businesses will be adversely affected.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

None expected.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

Incumbent local exchange carriers and competitive local exchange carriers.

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes___ No_x__

If yes, please explain the reason for imposing a more stringent standard.

For further guidance in the completion of this statement, please see §536.300, RSMo.