

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Proposed Rulemaking)
to Amend 4 CSR 240-33.160, Customer)
Proprietary Network Information)

Case No. TX-2008-0090

**OPINION OF COMMISSIONER ROBERT M. CLAYTON III,
CONCURRING, IN PART, AND DISSENTING, IN PART**

This Commissioner believes protecting telephone customers' private calling and billing information, known as "customer proprietary network information," (CPNI) is of the utmost importance. The Commission's CPNI rules addressing the unauthorized release of private information, whether intentional or by mistake, need to be regularly evaluated and updated to firmly assert the Commission's jurisdiction to protect consumers. Telecommunications companies must be held to a high standard in protecting their customers and those who violate Commission rules should be penalized as authorized by law. The Commission has before it an updated rule, including provisions for Commission notification in the event of a breach of confidential information to third parties. This Commissioner supports the adoption of the final rule but believes the Commission should have rejected the proposed amendment which effectively abandons the Commission's role in privacy enforcement at the time of known breaches of confidentiality.

A meaningful CPNI rule should include a section dealing with Commission notification of breaches of customers' CPNI. The rule proposed by staff contained such a provision that would have required telecommunications

companies to notify the Commission within 14 days of the breach. A breach has occurred when a person, without authorization or exceeding authorization, has intentionally gained access to, used or disclosed CPNI. The abandoned language merely required inexpensive electronic notification of Commission staff of inappropriate releases of customers' CPNI. The information would have been deemed highly confidential while staff evaluated whether the telecommunications carrier was complying with the Commission's CPNI rules and determining whether the Commission should take any enforcement action, such as a complaint. Assuming this is purely a law enforcement matter ignores the actions or omissions of the carriers. The Commission must hold the carriers to the highest standards, and the circumstances involving a breach require the Commission to review the carriers' practices.

The alternate language adopted by the majority in place of direct notification is inadequate for the Commission to improve customer protections. First, rather than notify the Commission upon individual breaches of security, the substitute language requires only that the carrier annually file a report of compliance with the Commission. Second, notifications of breach will be made in an untimely manner. Reports are due once a year on March 1st and, if a breach occurs on March 2nd of the same year, the Commission will be unaware of the breach until the next filing, one year later. Timely Commission notification is necessary for timely corrective action.

Further, the mandated report lacks specific reporting requirements. While the report requires that an officer certify that the company has procedures that

"are adequate" to comply with this rule and state how the procedures ensure compliance with the rule, very little detail is required to support the conclusory statements. Specifically related to "breaches," the annual report requires the company to generally disclose instances of an individual or entity that unlawfully obtained, used, disclosed or sold CPNI. The report requires general disclosure of whether customers did or did not have complaints about the release of unauthorized CPNI, although the report does not address the issue when customers are not aware of the breach. General observations will not give the Commission staff sufficient detail to identify good or bad practices.

The public expects that the Commission will be aware of this information and will use it to evaluate and improve the carriers' best practices. While this Commissioner has confidence that law enforcement will address some instances of privacy breaches, this Commission should not rely exclusively on Washington when protecting the public interest.

In conclusion, it has been argued that with the recent passage of HB1779 in the General Assembly, these rules will have no effect on the largest telecommunications carriers in the state and that this will be an unfair burden on the remaining operators. While this Commissioner agrees that the three largest ILECs and many CLECs may avoid all state mandates on privacy, this Commission must move forward with constructive policy in the public interest. State regulation of telecommunications may return in the future, and the Commission must have its rules in place should that ever occur. Commission waivers can address issues of unfairness and instances of undue burden or cost.

This Commissioner supports the remaining provisions of the rule and concurs, in part, however, for the foregoing reasons, this Commission dissents, in part.

Respectfully submitted,


Robert M. Clayton II, Commissioner

Dated this 20th day of May 2008,
At Jefferson City