



Missouri Telecommunications Industry Association

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March 31, 2008  
Data Center  
Missouri Public  
Service Commission

RICHARD TELTHORST, CAE  
President

March 31, 2008

The Honorable Cully Dale  
Secretary, Missouri Public Service Commission  
Post Office Box 360  
Jefferson City, Missouri 65102

**RE: Case No. TX-2008-0090  
4 CSR 240-33.160  
Customer Proprietary Network Information (CPNI) Rules**

Dear Judge Dale:

Thank you for the opportunity to comment on the Missouri Public Service Commission's (Commission or PSC) proposed changes to its Customer Proprietary Network Information (CPNI) Rules. The Missouri Telecommunications Industry Association (MTIA) offers only a few suggested changes that are necessary for the Commission's CPNI rule to conform to the CPNI rules that were recently enacted at the federal level by the Federal Communications Commission (FCC).

### **1. Definition of Breach**

The Commission's proposed rule does not include the FCC's standard of intent in the definition of breach. Specifically, the Commission's rule appears to have deleted or omitted the word "intentionally" from the definition of breach. See Proposed 4 CSR 240-33.160(1)(C). The Commission's definition of "breach" should conform to the FCC's rule which defines "breach" as follows:

As used in this section, a "breach" has occurred when a person, without authorization or exceeding authorization, has **intentionally** gained access to, used, or disclosed CPNI.

FCC Rule 47 CFR §64.2011(e)(emphasis added). Thus, the FCC's rule requires a breach to be intentional, but there is no such limitation in the Commission's proposed rule. This creates inconsistent standards and, as a result, company employees that access CPNI inadvertently or beyond their authority would be committing a breach under proposed Missouri rules but not under FCC's rules. Accordingly, the MTIA requests that the Commission include the FCC's standard of intent and add the word "**intentionally**" to conform to the FCC's definition.

## 2. Disclosure of Breach

The notification requirement in 240-33.160(8)(A) should be eliminated in its entirety because it conflicts with the FCC rule that telecommunications companies:

- (a) must notify the Federal Bureau of Investigation (FBI) and United States Secret Service (USSS); and
- (b) shall not notify customers or disclose the breach publicly, whether voluntarily or under state or local law or these rules . . . until seven (7) full business days have passed after notification to the USSS and the FBI.

47 C.F.R. §2011(a) and (b). Moreover, the FBI or USSS may direct a carrier not to disclose or notify for an initial period of up to thirty (30) days. *Id.* at §2011 (b)(3). The Commission's proposed rule conflicts with the FCC's rules that require initial and exclusive notification to the FBI/USSS and allow either federal agency to prohibit disclosure during the relevant investigation, so this rule should not be adopted.

In addition, the Commission's proposed rule provides no procedure for the notification of breach, so there is no way to insure that notification will not compound the breach. At the very least, the Commission's proposed rule should be amended to include a secure notification process and treat any such notifications as Highly Confidential under the Commission's rules in order to prevent disclosure prohibited by the FCC's rule.

## 3. Marketing Communications Services

The opt-in requirements for joint venture partners or independent contractors in 240-33.160(3)(A)1 should be revised to conform with the FCC rule so that it states that opt-in approval must be obtained from a customer before disclosing CPNI to joint venture partners or independent contractors **"for the purpose of marketing communications related services to that customer."**

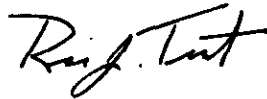
Telecommunications carriers use agents, joint venture partners, and contractors for a variety of reasons including but not limited to provisioning, billing and customer service functions, and the FCC CPNI opt-in approval rules do not apply to these activities. In fact, Section 222 of the Telecommunications Act states that nothing in the federal CPNI statute prohibits a telecommunications carrier from using CPNI to initiate, render, bill and collect for telecommunications

services. 47 U.S.C. §222. As such, MTIA's proposed modification would bring Missouri's rules into alignment with federal law and FCC rules.

### **CONCLUSION**

In summary, the MTIA respectfully requests that the Commission make the three modifications detailed above so that the Missouri Commission's Rule conforms to the recently enacted FCC rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Rich. Telthorst", written in a cursive style.

Richard Telthorst, CAE  
President

cc: Commissioners and Advisors