

**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)	Case No. TX-2008-
Proprietary Network Information)	

MOTION FOR FINAL ORDER OF RULEMAKING

COMES NOW the Staff of the Missouri Public Service Commission, by and through its Office of General Counsel, pursuant to § 536.016 RSMo. 2000, and for its *Motion for Final Order of Rulemaking* states as follows:

1. Section 536.016 provides that a state agency shall propose rules based upon “substantial evidence upon the record and a finding by the agency that the rule is necessary to carry out the purposes of the statute that granted such rulemaking authority.”

2. Pursuant to statutory authority and public interest requirements, Staff recommends the Commission amend the existing rules at 4 CSR 240-33.160, consistent with recent federal modifications, governing the procedures by which telecommunications companies may use, disclose, or permit access to customer proprietary network information (“CPNI”), and to add a requirement for telecommunications carriers to notify the Missouri Public Service Commission of CPNI security breaches.

3. Attached as Exhibit A is the Staff’s notarized affidavit concerning the necessity for this rulemaking. Exhibit B is a draft of a proposed rule for the Commission’s consideration.

4. The Commission’s authority to promulgate the rule, in addition to its general authority under § 386.250(2) RSMo. 2000 to supervise telecommunications companies, is supported by further decisions by the Federal Communications Commission (“FCC”). In

February 1998, the FCC “adopted a set of rules implementing [47 U.S.C. § 222]”¹ which promulgated rules regarding CPNI. Missouri Public Service Commission Rule 4 CSR 240-33.160, governing Missouri’s procedures for telecommunications companies to be able to use, disclose, or permit access to CPNI was filed on March 30, 2004, with an effective date of November 30, 2004.

In April 2007, the FCC released its *Report and Order*² (“CPNI Amendments”) “adopting additional safeguards to protect customers’ CPNI against unauthorized access and disclosure.” *Id.* at page 2. The FCC explicitly rejected requests to preempt all state CPNI obligations and asserted that the FCC “should allow states to also create rules for protecting CPNI.” *Id.* at page 33. For those states that “already have laws relating to safeguarding personal information such as CPNI...,” (at page 33), carriers are to comply with federal law and state law to the extent those laws “do not create a conflict with federal requirements.” *Id.* at page 33. Therefore, the Staff recommends the Commission amend 4 CSR 240-33.160 to comply with the FCC’s amendments to its CPNI rules,³ and to add a requirement for telecommunications carriers to notify the Missouri Public Service Commission of CPNI security breaches.

WHEREFORE, the Staff respectfully requests that the Commission issue a Final Order of Rulemaking to amend 4 CSR 240-33.160, Customer Proprietary Network Information.

¹ FCC Order 07-22, page 5, CC Docket No. 96-115 and WC Docket No. 04-36, In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services, *Report and Order and Further Notice of Proposed Rulemaking* (amending current CPNI rules) citing *the CPNI Order*, 13 FCC Rcd 8061; string cite at page 4, footnote 7.

² FCC Order 07-22, *Report and Order and Further Notice of Proposed Rulemaking*.

³ See Appendix B, of FCC Order 07-22, listing specific amendments to Subpart U of Part 64, of Title 47 of the Code of Federal Regulations regarding CPNI.

Respectfully submitted,

/s/ Shelley Syler Brueggemann

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 25th day of September 2007.

/s/ Shelley Syler Brueggemann

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

AFFIDAVIT OF Natelle Dietrich

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Natelle Dietrich, employee of the Staff of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she participated in the preparation of this affidavit and accompanying proposed rulemaking, and states that the information therein is true and correct to the best of her knowledge and belief.

In April 2007, the FCC released a Report and Order modifying its customer proprietary network information (CPNI) rules. The modifications conflict with certain provisions of the Missouri CPNI rules at 4 CSR 240-33.160. Therefore, Staff recommends the Missouri CPNI rules be modified to incorporate the following concepts from the federal CPNI rules.

- 4 CSR 240-33.160 (1) – Add or modify definitions
- 4 CSR 240-33.160 (3) – Approval Required for Use of CPNI
 - remove all references for release of CPNI to joint venture partners and independent contractors
- 4 CSR 240-33.160 (4) – Customer Notification Requirements
 - Additional standards for telephone access to CPNI vs online access to CPNI
 - Addition of password protection and authentication requirements
 - Addition of customer notification of changes to customer accounts
- New 4 CSR 240-33.160(7) – Notification of CPNI security breaches

The proposed amendment largely mirrors federal CPNI requirements. The only addition to the proposed amendment is the requirement that companies inform the Commission of CPNI security breaches. Since the notification can be in the form of an email to appropriate Commission personnel, it is not anticipated that the fiscal impact of the proposed amendment will exceed \$500.



NATELLE DIETRICH

Subscribed and affirmed before me this 25th day of September 2007

I am commissioned as a notary public within the County of Callaway, State of Missouri and my commission expires on 9-21-10



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission: #06942086



NOTARY PUBLIC

**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.

PURPOSE: This rule establishes the procedures by which telecommunications companies may use, disclose, or permit access to customer proprietary network information and requires 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.

~~(D)~~ Categories of service include local exchange telecommunications services and interexchange telecommunications services;

~~(E)~~ Communications-related services are telecommunications services, information services typically provided by telecommunications companies, and services related to the provision or maintenance of customer premises equipment;

~~(F)~~ Control (including the terms “controlling,” “controlled by,” and “common control”) is the possession, directly or indirectly, of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one (1) or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one (1) or more other entities, whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. The commission shall presume that the beneficial ownership of ten percent (10%) or more of voting securities or partnership interest of an entity constitutes control for purposes of this rule;

| (~~FG~~) Customer is a person or entity to which the telecommunications company is currently providing service;

| (~~GH~~) Customer proprietary network information (CPNI) is information that relates to the quantity, technical configuration, type, destination, location and amount of use of a telecommunications service subscribed to by any customer of a telecommunications company, and that is made available to the telecommunications company by the customer solely by virtue of the customer-telecommunications company relationship. Customer proprietary network information also is information contained in bills pertaining to basic local exchange telecommunications service or interexchange telecommunications service received by a customer of a telecommunications company. Customer proprietary network information does not include subscriber list information;

| (~~HI~~) Customer premises equipment (CPE) is equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications;

| (~~IJ~~) Independent contractor is a third party who contracts with a telecommunications company for the provision of services to the telecommunications company, but who is not controlled by the telecommunications company;

| (~~JK~~) Information service is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service;

| (~~KL~~) Information services typically provided by telecommunications companies are only those information services as defined in subsection (1)(~~JK~~) that are typically provided by telecommunications companies, such as Internet access or voice mail services. Information services typically provided by telecommunications companies as used in this rule shall not include retail consumer services provided using Internet websites (such as travel reservation services or mortgage lending services), whether or not such services may otherwise be considered to be information services;

| (~~LM~~) Joint venture partner is a third party that agrees to share with a telecommunications company in the profits and losses of a business entity formed by the telecommunications company and the third party;

| (~~MN~~) Local exchange telecommunications company (LEC) is any company engaged in the provision of local exchange or exchange access telecommunications services;

| (~~NO~~) Opt-in approval is a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. This approval method requires that the telecommunications company obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the telecommunications company's request consistent with the requirements set forth in this rule;

(~~OP~~) Opt-out approval is a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. Under this approval method, a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to object thereto within a thirty (30)-day minimum period of time after the customer is provided appropriate notification of the telecommunications company's request for consent consistent with these rules. A telecommunications company may, in its discretion, provide for a longer period. Telecommunications companies must notify customers as to the applicable waiting period for a response before approval is assumed;

(~~PQ~~) Party is a participant in, or an agent or designee acting on behalf of and for the benefit of a participant to a transaction in which an end-user's CPNI is sold, transferred, shared or otherwise disseminated;

(~~QR~~) Public safety answering point (PSAP) is a communications location used by public safety agencies for answering emergency telephone service calls which originate in a given area. A PSAP may be designated as primary or secondary, which refers to the order in which calls are directed for answering. PSAPs may be located at police, fire or emergency medical service communications centers, or may be located in a specialized centralized communications center which handles all emergency communications for an area;

(~~RS~~) Subscriber list information (SLI) is any information identifying the listed names of subscribers of a telecommunications company and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and that the telecommunications company or an affiliate has published, caused to be published, or accepted for publication in any directory format;

(~~ST~~) Telecommunications company is used as defined in section 386.020, RSMo 2000;

(~~TU~~) Telecommunications service is used as defined in section 386.020, RSMo 2000;

(~~UV~~) Third party is a company not owned or controlled by or owning or controlling a telecommunications company. The third party usually operates outside the market in which a telecommunications company operates and does not provide communications-related services.

(2) Use of CPNI Without Customer Approval.

(A) Any telecommunications company may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service to which the customer already subscribes from the same telecommunications company, without customer approval.

1. If a telecommunications company provides different categories of service, and a customer subscribes to more than one (1) category of service offered by the telecommunications company, the telecommunications company is permitted to share CPNI among the telecommunications company's affiliates that provide a service offering to the customer.

2. If a telecommunications company provides different categories of service, but a customer does not subscribe to more than one offering by the telecommunications company,

the telecommunications company is not permitted to share CPNI with the telecommunications company's affiliates, except as provided in section (3).

(B) A telecommunications company may not use, disclose, or permit access to CPNI to market to a customer service offerings that are within a category of service to which the customer does not already subscribe from that telecommunications company, unless the telecommunications company has customer approval to do so, except as described in subsection (2)(C).

1. A telecommunications company may use, disclose or permit access to CPNI derived from its provision of basic local exchange telecommunications service or interexchange service, without customer approval, for the provision of CPE and call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and protocol conversions.

2. A telecommunications company may not use, disclose or permit access to CPNI to identify or track customers that call competing telecommunications service providers. For example, a local exchange telecommunications company may not use basic local telecommunications exchange service CPNI to track all customers that call basic local exchange telecommunications service competitors.

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

1. A telecommunications company may use, disclose, or permit access to CPNI, without customer approval, in its provision of inside wiring installation, maintenance, and repair services.

2. A telecommunications company may use CPNI, without customer approval, to market services such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features.

3. A telecommunications company may use, disclose, or permit access to CPNI to protect the rights or property of the telecommunications company, or to protect users of those services and other telecommunications companies from fraudulent, abusive, or unlawful use of, or subscription to, such services.

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)(~~RS~~).

(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)32. below. A telecommunications company may elect not to apply the safeguards set forth in paragraph (3)(A)32. 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.

23. 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.

(B) Except for use and disclosure of CPNI that is permitted without customer approval under section (2) of this rule, or that is described in subsection (2)(B), or as otherwise provided in section 222 of the Communications Act of 1934, as amended, a telecommunications company may only use, disclose, or permit access to its customer's individually identifiable CPNI subject to opt-in approval.

(C) A telecommunications company may obtain approval through written, oral or electronic methods.

1. A telecommunications company relying on oral approval must bear the burden of demonstrating that such approval has been given in compliance with the commission's rule.

2. Approval or disapproval to use, disclose, or permit access to a customer's CPNI obtained by a telecommunications company must remain in effect until the customer revokes or limits such approval or disapproval.

3. A telecommunications company must maintain records of approval, whether oral, written or electronic, for at least one (1) year.

(4) Customer Notification Requirements.

(A) Prior to any solicitation for customer approval, a telecommunications company must provide notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.

1. A telecommunications company must maintain records of notification, whether oral, written or electronic, for at least one (1) year.

(B) Individual notice to customers must be provided when soliciting approval to use, disclose, or permit access to customers' CPNI.

(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.

1. The notification must state that the customer has a right, and the telecommunications company a duty, under federal and state law, to protect the confidentiality of CPNI.

2. The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.

3. The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes. However, companies may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.

4. The notification shall be comprehensible and shall not be misleading.

5. If written notification is provided, the notice must be clearly legible, use at least a ten (10)-point font, and be placed in an area so as to be readily apparent to a customer.

6. If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

7. A telecommunications company may state in the notification that the customer's approval to use CPNI may enhance the telecommunications company's ability to offer products and services tailored to the customer's needs. The notification required under subsection (4)(C) shall be in a font size no smaller than such statement.

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.

9. A telecommunications company may not include in the notification any statement attempting to encourage a customer to freeze third party access to CPNI.

10. The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes to from that telecommunications company is valid until the customer affirmatively revokes or limits such approval or denial.

11. A telecommunications company's solicitation for approval must include a notification of a customer's CPNI rights. The CPNI rights must be in close proximity to the solicitation.

(D) Notice Requirements Specific to Opt-Out. A telecommunications company must provide notification to obtain opt-out approval through electronic or written methods, but

not by oral communication (except as provided in subsection (4)(F)). The contents of any such notification must comply with the requirements of subsection (4)(C).

1. Telecommunications companies must wait a thirty (30)-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose, or permit access to CPNI. A telecommunications company may, in its discretion, provide for a longer period. Telecommunications companies must notify customers as to the applicable waiting period for a response before approval is assumed.

A. In the case of an electronic form of notification, the waiting period shall begin to run from the date on which the notification was sent; and

B. In the case of notification by mail, the waiting period shall begin to run on the third day following the date that the notification was mailed.

2. Telecommunications companies using the opt-out mechanism must provide notices to their customers every two (2) years.

3. Telecommunications companies that use e-mail to provide opt-out notices must comply with the following requirements in addition to the requirements generally applicable to notification:

A. Telecommunications companies must obtain express, verifiable, prior approval from consumers to send notices via e-mail regarding their service in general, or CPNI in particular;

B. Telecommunications companies must allow customers to reply directly to e-mails containing CPNI notices in order to opt-out;

C. Opt-out e-mail notices that are returned to the telecommunications company as undeliverable must be sent to the customer in another form before companies may consider the customer to have received notice;

D. Telecommunications companies that use e-mail to send CPNI notices must ensure that the subject line of the message clearly and accurately identifies the subject matter of the e-mail; and

E. Telecommunications companies must make available to every customer a method to opt-out that is of no additional cost to the customer and that is available twenty-four (24) hours a day, seven (7) days a week. Telecommunications companies may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no charge to the customer and are able to effectuate that choice whenever they choose.

(E) Notice Requirements Specific to Opt-In. A telecommunications company may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must comply with the requirements of subsection (4)(C).

(F) Notice Requirements Specific to One (1)-Time Use of CPNI.

1. Companies may use oral notice to obtain limited, one (1)-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether telecommunications companies use opt-out or opt-in approval based on the nature of the contact.

2. The contents of any such notification must comply with the requirements of subsection (4)(C), except that telecommunications companies may omit any of the

following notice provisions if not relevant to the limited use for which the telecommunications company seeks CPNI:

A. Telecommunications companies need not advise customers that if they have opted-out previously, no action is needed to maintain the opt-out election;

B. Telecommunications companies need not advise customers that they may share CPNI with their affiliates or third parties and need not name those entities if the limited CPNI usage will not result in use by, or disclosure to, an affiliate or third party;

C. Telecommunications companies need not disclose the means by which a customer can deny or withdraw future access to CPNI, so long as telecommunications companies explain to customers that the scope of the approval the telecommunications company seeks is limited to one (1)-time use; and

D. Telecommunications companies may omit disclosure of the precise steps a customer must take in order to grant or deny access to CPNI, as long as the telecommunications company clearly communicates that the customer can deny access to his CPNI for the call.

(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.

(65) Release of Customer Proprietary Network Information Resulting from Bankruptcy, Cessation of Operation, Merger or Transfer of Assets.

(A) The exiting carrier shall provide customers with advance notice of the transfer of CPNI data.

(B) Customer notification shall comply with section (4) of this rule.

(C) Any opt-in/opt-out authorizations the customers previously executed with the exiting carrier should be transferred to the new carrier automatically, thereby ensuring that customers maintain their privacy interests by protecting this information from disclosure and dissemination. If the exiting carrier does not transfer CPNI data to the new carrier, the company receiving the new customers shall send a new CPNI notice to the customers acquired from the exiting carrier.

(D) The provisions of this section do not apply to customers transferred to the carrier of last resort under the commission's snap-back rule, 4 CSR 240-32.120.

(7) Safeguards Required for Use of Customer Proprietary Network Information.

(A) Telecommunications companies must implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI.

(B) Telecommunications companies must train their personnel as to when they are and are not authorized to use CPNI, and companies must have an express disciplinary process in place.

(C) All telecommunications companies shall maintain a record, electronically or in some other manner, of their own, their agents', their affiliates', their joint venture partners', or their independent contractors' sales and marketing campaigns that use their customers' CPNI. All companies shall maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI. The record must include a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as a part of the campaign. Telecommunications companies shall retain these records for all current and former customers for a minimum of one (1) year.

(D) A telecommunications company must establish a supervisory review process regarding telecommunications company compliance with the rules for outbound marketing situations and maintain records of telecommunications company compliance for a minimum period of one (1) year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request for customer approval.

(E) Telecommunications companies must provide written notice within five (5) business days to the commission of any instance where the opt-out mechanisms do not work properly, to such a degree that customers' inability to opt-out is more than an anomaly.

1. The notice shall be in the form of a letter, and shall include the telecommunications company's name, a description of the opt-out mechanism(s) used, the problem(s) experienced, the remedy proposed and when it will be/was implemented, a copy of the notice provided to customers, and contact information.

2. Such notice must be submitted even if the telecommunications company offers other methods by which customers may opt-out.

(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-2008-00XX. 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 XXX at XX 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.*