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4 STATE OF MISSOURI
5 PUBLIC SERVICE COMMISSION

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9 IN THE MATTER OF A PROPOSED RULEMAKING TO AMEND
10 4 CSR 240-33.160,
11 CUSTOMER PROPRIETARY NETWORK INFORMATION

12 Case No. TX-2008-0090

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13 TRANSCRIPT OF PROCEEDINGS

14 HEARING

15 VOLUME 1

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
TRANSCRIPT OF PROCEEDINGS

Hearing

April 3, 2008

Jefferson City, Missouri

Volume 1

In the Matter of a Proposed)
Rulemaking to Amend) Case No. TX-2008-0090
4 CSR 240-33.160, Customer)
Proprietary Network Information)

COLLEEN M. DALE, Presiding,
CHIEF REGULATORY LAW JUDGE
CONNIE MURRAY
ROBERT M. CLAYTON, III
TERRY JARRETT
COMMISSIONERS

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1 P R O C E E D I N G S

2 JUDGE DALE: Good morning. We are here
3 today, April 3rd, 2008, in the matter of a proposed
4 rulemaking to amend 4 CSR 240-33.160, Customer Proprietary
5 Network Information, Case No. TX-2008-0090.

6 Let's begin with entries of appearance,
7 beginning with Staff.

8 MS. BRUEGGEMANN: Shelley Syler Brueggemann
9 for the Staff of the Commission, 200 Madison Street,
10 Jefferson City, Missouri 65101.

11 JUDGE DALE: Thank you.

12 MR. BUB: Good morning, Your Honor.

13 Leo Bub for AT&T, and my address is
14 One AT&T Center, St. Louis, Missouri 63101.

15 JUDGE DALE: Are there any other counsel
16 that wish to enter an appearance?

17 In that case, we will begin with our first
18 witness for the Staff.

19 MS. BRUEGGEMANN: And we have Walt Cecil,
20 Regulatory Economist II, here to answer questions, and
21 just as a side note, we also have John VanEschen, Manager
22 of the Telecommunications Department, available, and
23 Natelle Dietrich, Director of Operations, here also for
24 the Commission's consideration.

25 JUDGE DALE: Thank you.

1 Should we swear them all?

2 MS. BRUEGGEMANN: If that would be easiest,
3 we might as well.

4 JUDGE DALE: Let's go ahead and do that.

5 (Witnesses sworn/affirmed.)

6 JUDGE DALE: You may proceed.

7 MS. BRUEGGEMANN: Well, as an introduction,
8 since there were many, many comments filed on this
9 rulemaking, I think a little bit of history to start the
10 discussion is helpful.

11 In 2004 the Commission's Customer
12 Proprietary Network Information rule went into effect
13 under 4 CSR 240-33.160.

14 This rule established Missouri procedures by
15 which telecommunications companies may use, disclose or
16 permit access to Customer Proprietary Network Information,
17 or what we'll hear referred to as CPNI.

18 The Commission rule was consistent with the
19 FCC's rule on CPNI that began at 4 CFR Section 64.2001
20 through .2011, I believe, regarding privacy of customer
21 information and CPNI.

22 Now, last spring, in April of 2007, the FCC
23 stated that it was going to secure CPNI by amending its
24 rules. These revisions included requiring carriers to
25 obtain opt-in consent from customers before disclosing a

1 customer's CPNI to the carrier's joint venture partners or
2 independent contractors for the purposes of marketing
3 communications-related services to that customer, rather
4 than opt-out consent.

5 It also included new authentication
6 requirements, including passwords, before carriers were
7 allowed to release call detail information; customer
8 notification when no passwords or authentication means are
9 lost, forgotten, created or changed; annual CPNI
10 certification, including filings, notification process for
11 law enforcement and customers in the event of a CPNI
12 breach.

13 They also extended CPNI rules to
14 interconnected VoIP services, and they explicitly required
15 that carriers take reasonable measures to discover and
16 protect against pretexting.

17 In the FCC's Report and Order modifying its
18 CPNI rules, the FCC explicitly rejected requests to
19 preempt all State CPNI obligations and asserted that the
20 FCC should allow states to also create rules for
21 protecting CPNI.

22 For those states that already have laws
23 relating to safeguarding personal information such as
24 CPNI, carriers were to comply with Federal law and State
25 law to the extent those laws do not create a conflict with

1 Federal requirements. And that was at page 33 of that
2 Order.

3 With these Federal rule changes, the
4 Commission's existing 33.160 CPNI rule needed modification
5 to become consistent with the new revisions to the FCC
6 rule.

7 A provision is also proposed requiring
8 telecommunications companies to notify the Missouri Public
9 Service Commission of CPNI security breaches.

10 Now, in light of the Company comments filed
11 in this rulemaking regarding this subsection, Staff is
12 recommending, as reflected in its comments, that the
13 breach notification language in Subsection (8)(A) be
14 changed to allow Company fourteen days, rather than seven
15 days, to notify the Commission of a breach and that the
16 notification be designated as a highly confidential
17 electronic mail message.

18 Now, AT&T filed comments objecting to this
19 notification provision but also objected to the types of
20 breach that would require reporting under the definition
21 of breach, specifically the proposed definition at issue
22 states -- and this is the Commission's proposed definition
23 of breach -- breach -- or Staff's. Excuse me.

24 Breach has occurred when a person without
25 authorization or exceeding authorization has gained access

4 However, Staff feels that it is in the
5 public interest for this Commission to be notified when an
6 unauthorized release of a customer's private information
7 occurs.

11 The Commission has statutory authority to
12 promulgate this type of notification provision pursuant to
13 392.470.1. This Commission may impose any conditions that
14 it deems reasonable and necessary upon any
15 telecommunications company if those conditions are in the
16 public interest and consistent with statutory provisions,
17 including the provision of protecting consumer privacy,
18 which is found at 392.185, Subsection 9.

24 Thank you.

1 Mr. Cecil's testimony and then we'll see if there are
2 questions at that point.

3 MS. BRUEGGEMANN: Mr. Cecil was intricate in
4 filing the comments that were filed yesterday, and so he
5 didn't have any prepared testimony for this hearing this
6 morning. He was prepared to answer questions.

7 JUDGE DALE: Mr. Cecil can make a statement,
8 but I have to have testimony in the record because of
9 statutory requirements concerning rulemaking of the Public
10 Service Commission.

11 MR. CECIL: Okay. Good morning and thank
12 you, I think.

13 As Ms. Brueggemann pointed out, the FCC
14 recently modified its rules, having found, in response to
15 some additions filed by various parties before the FCC,
16 that its CPNI rules were deficient with respect to joint
17 venture partners and with independent contractors access
18 to Customer Proprietary Network Information.

19 To that end, its comments and changing
20 rules, creating essentially a new set of guidelines or
21 rules allowing more protection for Customer Proprietary
22 Network Information, essentially saying that independent
23 contractors and other agents required more scrutiny.

24 This Commission, and the Staff specifically,
25 felt that we needed to update our rules to reflect those

1 changes in the Federal rule. And we have proposed changes
2 in the definitions, as well as changes in our opting-in
3 and opting-out guidelines, specifically indicating that a
4 new subsection for opting in is required when information
5 is released to joint venture partners and other agents.

6 JUDGE DALE: And you supporting the changes
7 that are set forth in your comments?

8 MR. CECIL: Yes, we do.

9 JUDGE DALE: Thank you.

10 MR. CECIL: I'd like to point out -- one
11 other item I'd like to point out.

12 I'd like to point out that nothing that we
13 are proposing prohibits a telecommunications carrier from
14 using, disclosing or permitting access to Customer
15 Proprietary Network Information obtained from its
16 customers directly or indirectly through agents -- okay.

17 Let me start over again, if you'd please.

18 Section 381 of 4 CSR 33.160 reads as
19 follows, and I'll point out our suggested changes as we go
20 through it.

21 JUDGE DALE: And these are set forth on
22 page?

23 MR. CECIL: And they are set forth on page 3
24 of my comments.

25 JUDGE DALE: Thank you very much.

1 MR. CECIL: A telecommunications company
2 shall obtain opting approval from a customer before
3 disclosing that customer's CPNI to the telecommunications
4 companies, joint venture partners or independent
5 contractors.

6 We're asking now that this language be
7 modified. Nothing in this section prohibits a
8 telecommunications carrier from using, disclosing or
9 permitting access to a Customer Proprietary Network
10 Information obtained from its customers either directly or
11 indirectly through its agents to initiate, render, bill
12 and collect for telecommunications services.

13 Then we're switching back to language
14 originally proposed. Any such disclosure -- oh, pardon
15 me.

16 Any disclosure to joint venture partners and
17 independent contractors for purposes other than those
18 specifically listed above shall be subject to safeguards
19 set forth in paragraph (3)(A)3.

20 I'd also like to bring to the Commission's
21 attention the changes in 33.160(4)(C)(8). A
22 telecommunications company -- it reads, a
23 telecommunications company also may state in the
24 notification that it may be compelled to disclose CPNI to
25 any person upon affirmative written request by the

1 customer deleting, and subject to, and inserting,
2 following appropriate authentication procedures as
3 described in Section 5.

4 In Section 33.160, Sub (8)(A), we'd like to
5 delete the reference to seven days' notification and
6 expand that to fourteen, insert the word fourteen business
7 days.

8 And we'd also like to modify our language
9 slightly by inserting via highly confidential electronic
10 mail, such that the report or notification we'd like to
11 receive would be via e-mail.

12 AT&T has some minor edits.

13 In 33.160(1)(L) they note that -- they made
14 a reference to (1)(J) and it should read (1)(K). And in
15 160 -- or .160(5)(C) there is -- there is a word that
16 should be deleted. The word is to, t-o, and we'd like to
17 insert the word "or," such that the statement would read,
18 notification shall not reveal the changed information or
19 be sent to new account information.

20 JUDGE DALE: Thank you.

21 Are there any questions for Mr. Cecil?

22 COMMISSIONER CLAYTON: Can we wait to the
23 end?

24 JUDGE DALE: We're going to reserve your
25 questions to the end, and we'll be able to ask all of the

1 witnesses at the same time.

2 Mr. Bub, do you have a witness?

3 MR. BUB: No, Your Honor. I just have some
4 comments myself, if that's all right.

5 JUDGE DALE: You'll have to be sworn.

6 MR. BUB: Okay.

7 (Witness sworn/affirmed.)

8 JUDGE DALE: Thank you.

9 MR. BUB: Thank you, Your Honor, and good
10 morning.

11 For the record, I'm Leo Bub for AT&T, and we
12 appreciate the Commission giving us time today to hear our
13 comments.

14 We know you have a lot on your plate and
15 you're all very busy, so we appreciate you making this
16 time for us.

17 I'd like to leave you just with one thing
18 this morning, and that's the need for consistency with the
19 Federal CPNI rule. That rule is comprehensive.

20 It represents what the FCC views as needed
21 to address the national concern of pretexting. And in the
22 FCC's order adopting its new rule changes, it defines
23 pretexting.

24 And that's the practice of pretending to be
25 a particular customer or other authorized person in order

1 to obtain access to that customer's call detail or other
2 private communications records.

3 So basically what the FCC is trying to do is
4 to shut the door on these people that are scamming
5 telephone companies to get personal records of customers.

6 That's a very detailed rule. A lot of work
7 went into it. The national level carriers all across the
8 country were involved in developing something that would
9 address the problem and be workable for carriers.

10 And our point here is that it's important
11 when a State enacts separate CPNI rules, that it remain
12 consistent with this Federal law. And that's important,
13 just to avoid conflicts in law, it's important to avoid
14 confusion and it's important to avoid causing
15 implementation problems for the carriers.

16 You can understand from our perspective --
17 you know, just take AT&T for example -- and I'm sure other
18 carriers in the same position -- to comply with these new
19 rules, we've had to work long and hard and invest a
20 considerable amount of time and resources to develop new
21 ways to comply with these rules, new methods, new
22 procedures, systems, system changes and then, you know,
23 employee training, so the employees know what to do and
24 know what's required under the law.

25 And all this is designed to achieve uniform

1 compliance, you know, across the company. And, you know,
2 we're not just talking Missouri. AT&T operates as an ILEC
3 in 22 states and as an interexchange carrier in all 50.

4 So the problem for us, and I'm sure probably
5 for other carriers as well, is when different state-
6 specific requirements are implemented, it imposes
7 additional costs, but then it also causes a potential for
8 internal confusion with our own employees to know, you
9 know, what is required and where.

10 And a good example of that is the proposed
11 change to the definition here of breach. What the
12 Commission's proposed rule does, it's identical, except it
13 removes the word "intentional."

14 And I think what you need to do is just go
15 back to the FCC's definition to remember what the FCC is
16 trying to do is here, is to try and crack down on
17 pretexting. So by -- and that's intentional conduct.

18 By removing that word "intentional," just on
19 its face, what the State's proposed rule does is
20 materially alters what the FCC is intending to go after
21 with its new rules. And, second, it injects confusion.

22 I'd like to go to Staff's comments that it
23 filed yesterday and just, you know, point out a couple of
24 things.

25 Staff says, page 2, at the top of the page,

1 that it's not suggesting the Commission be notified of
2 inadvertent errors but releases that have the potential to
3 harm customers.

4 But then look earlier in their comments, and
5 that's not quite what they say earlier. On page 1 it
6 says, that although mistakes such as those discussed in
7 AT&T comments -- and what we were talking about were
8 things like when customers' bills gets stuck together in
9 processing and mailing sometimes, you know, mistakes
10 happen and maybe one customer's bill might stick to
11 another and get mailed out, so one customer may see not
12 only its bill but maybe another customer's as well.

13 Sometimes a representative inadvertently
14 might transpose a number on a telephone number looking at
15 customer records, and they inadvertently disclose
16 something like a customer's balance or maybe the vertical
17 features that a customer may have, realizing that he or
18 she has made a mistake.

19 Those are the unintentional errors that we
20 try to minimize, but those things do happen in the course
21 of business, and the FCC doesn't see any of those types of
22 things as reportable. That's not what they're intending
23 to go after.

24 But, anyway, Staff's comments recognize --
25 going back to their comments -- that they can happen but

1 this does not excuse a disclosure of CPNI that is
2 unintentionally released but, nonetheless, harmful to
3 customers.

4 Staff is simply recommending the Commission
5 be notified of such disclosures where CPNI was released
6 without proper authorization.

7 So here we're presented with two problems.
8 One, the rule doesn't make any distinction for inadvertent
9 errors. And, remember, the FCC's rule did limit the
10 definition of breach to intentional conduct.

11 The second, Staff says, we don't have to
12 notify for inadvertent errors, only those that have the
13 potential to harm customers.

14 And our problem is, how are we going to
15 know, you know, what to report? It's a pretty vague
16 standard for a carrier to implement, and we see that as
17 causing real problems for our folks and for our compliance
18 effort.

19 And here you have to remember that the FCC's
20 order has real teeth in it. In its revisions they added a
21 whole new enforcement section. And one of the things that
22 they said in their order adopting its new rules is that
23 they're going to infer from the occurrence of breach, as
24 they define it, that a carrier's system are inadequate.

25 So we have all, you know, the incentives in

1 the world to make sure that things work and, you know,
2 that's what we intend to do.

3 And our concern is that if there is a State-
4 specific requirement that's going to cause us to do
5 something different and if it's vague and potentially
6 confusing, it could cause, you know, us not to be in
7 compliance in one respect or another.

8 So our goal here is to help maintain a
9 uniform standard that not only we, but other carriers, can
10 implement.

11 While we're on this one point of what we
12 need to report, Staff also tries to minimize the burdens
13 and costs of this extra reporting requirement.

14 And here at the top of page 2 it says
15 that the existing Missouri rule -- that's
16 4 CSR 240-33.160(6)(C) -- already requires all
17 telecommunications companies to maintain a record of all
18 instances where CPNI was disclosed or provided to third
19 parties.

20 Staff says that Company should already be
21 maintaining records of much of the information anticipated
22 by the requirements to maintain records on CPNI breaches.
23 As such, the costs associated with the additional
24 requirements to electronically notify; i.e., e-mail
25 notification, the MoPSC of breaches should be minimal.

1 We really think Staff is off base here.

2 Missouri -- the present Missouri rule,
3 33.160(6)(C), has nothing to do with security breaches.
4 It only requires a carrier to keep records of CPNI
5 disclosures to third parties for marketing campaigns. And
6 you can see that real clearly when you go to current
7 Missouri rule.

8 And if I could just beg your indulgence to
9 read a little bit what Staff quotes in its comments out of
10 the rules, one sentence that says, all companies shall
11 maintain a record of all instances where CPNI was
12 disclosed or provided to third parties or a third party
13 was allowed access to CPNI.

14 Well, just taking in isolation it may
15 support what Staff says, it would have to disclose any
16 type of CPNI breach. But if you read the whole paragraph,
17 that what the Missouri rule is talking about is marketing
18 campaigns, when a carrier gives CPNI to one of its agents
19 for marketing purposes. We have to keep records of that.

20 And I'll just read it real quick. All
21 telecommunications companies shall maintain a record
22 electronically or in some other manner of their own, their
23 agents, their affiliates, their joint venture partners or
24 their independent contractors, sales and marketing
25 campaigns that use their customers' CPNI.

1 And then here comes Staff's sentence. All
2 companies shall maintain a record of all instances where
3 CPNI was disclosed or provided to third parties or where
4 third parties were allowed access to CPNI.

5 And it continues. The record must include a
6 description of each campaign, the specific CPNI that was
7 used in the campaign and what products and services were
8 offered as part of the campaign. And then the rest of the
9 rule just tells us how long we have to keep that
10 information.

11 So it's being quoted to you as something
12 already requiring us to keep this information. That's not
13 quite correct.

14 This is just one example.

15 One other thing I'd like to bring up real
16 quick is something else that Staff said in its comments in
17 response to us, and it's more of a clarification, because
18 I'm not sure if our comment was completely understood.

19 And this is on page 4 of Staff's comments,
20 where they're talking about disclosure of CPNI pursuant to
21 written requests, and this is at the top of the page.

22 It's a section that describes notification
23 that must be provided to customers in informing them of
24 when CPNI may be disclosed and what Staff's proposed --
25 what the Commission's proposed rule says. And this is the

1 language that we had a little bit of concern with and it's
2 just for clarity purposes.

3 A telecommunications company also may state
4 in a notification -- that's the one that we sent out to
5 customers -- that it may be compelled to disclose CPNI to
6 any person upon affirmative written request by the
7 customer.

8 And the part that we have problems with is
9 it used to say, and subject to appropriate authentication
10 procedures as described in Section 5 below.

11 Staff's proposing, just as we heard now and
12 in its comments, to modify that a little bit by moving and
13 subject to inserting the following authentication
14 procedures in 5 below.

15 Our problem was that that whole Section 5
16 didn't have anything to do with written notification.

17 If you look at those things that are set out
18 in Section 5, they talk about telephone access to CPNI,
19 online access to CPNI and in-store access to CPNI, and
20 there is nothing in there about written requests.

21 And our thought would be to modify this by
22 just ending it right after the words written request by
23 the customer. Because when a customer gives us their
24 written authorization to disclose the CPNI, then it would
25 most likely follow the direction to mail it where they

1 wanted it to go.

2 By referencing the methods, the safeguards,
3 if you want, on that in Subsection 5, there really isn't
4 anything there that would apply to a written request, and
5 that was our point for that one.

6 In closing I just want to highlight that,
7 you know, our goal here is to avoid changes to the scheme
8 of the CPNI rules that could potentially weaken our
9 overall compliance efforts.

10 And even though it's our position that there
11 really isn't any need for separate State rules, because
12 the Federal ones are comprehensive and complete, you know,
13 notwithstanding that, we recognize that Staff has worked
14 long and hard on these rules and, you know, pretty much
15 have done a good job in capturing them.

16 And so I don't mean our comments to -- meant
17 to appear to nitpick them in any way, because I think
18 overall they did a very good job, and our goal here is
19 just to work together to achieve rules that are consistent
20 with the FCC's rules and that we wind up with something
21 that carriers in the industry can implement and comply
22 with.

23 Thank you.

24 JUDGE DALE: Thank you.

25 Is there anyone else who wishes to testify?

1 (Witness sworn/affirmed.)

2 JUDGE DALE: Proceed.

3 MR. IDOUX: Good morning, Commissioners.

4 Embarq absolutely appreciate the opportunity
5 to be here this morning to provide comments on this very
6 important topic.

7 As an active member of the MTIA, I've been
8 personally involved in the development of the MTIA's
9 comments, and Embarq fully supports the comments made
10 earlier this week by Richard Telthorst on behalf of the
11 MTIA.

12 Because our comments mirror, we opted not to
13 file written comments, but I wanted to appear here today
14 to indicate that we do support MTIA's comments and allow
15 you an opportunity to ask any questions.

16 I want to also assure you that Embarq takes
17 its CPNI obligations very seriously. Just last quarter,
18 the last half of 2007, we went through a company-wide
19 training session for CPNI. It included an online training
20 class that every employee was required to take.

21 Not only was it an online training course
22 but there was an online quiz that was required to be
23 successfully completed at the end. I tried to just jump
24 to the quiz, wasn't able to.

25 So they are forcing all of the employees to

1 be up to date on current CPNI rules. That information is
2 captured, reported to management, and improvements made
3 continually, so we can constantly keep our employee base
4 up to date on CPI obligations as required by the FCC
5 obligations.

6 I'm also happy to report that we
7 successfully passed that end-of-course quiz. I won't tell
8 you my score.

9 In addition to the eight exchanges that
10 Embarq provides service here in Missouri, we also operate
11 in seventeen states. And where practical Embarq strives
12 for national policies and national operating procedures
13 which allows Embarq to better serve our customers because
14 we're able to maintain a competitively focused cost
15 structure.

16 And in a lot of ways I'm going to be
17 mirroring some of the comments of AT&T on that topic.

18 As such, we strongly encourage the
19 Commission to mirror the FCC's CPNI rules by adding the
20 words unintentional (sic) to the definition of breach and
21 the words for the purpose of marketing communications
22 related services to that customer as recommended by the
23 MTIA.

24 The other issue I'd like to discuss briefly
25 is, in addition to the definition of breach and the

1 marketing communications services issue raised by the
2 MTIA, the disclosure of breach and the requirement to file
3 notice with the Commission within seven days.

4 Embarq had some initial concerns with that,
5 but with Staff's latest recommendation to move to fourteen
6 days and allow us to file the material under seal, we
7 fully support those comments of -- proposed changes by
8 Staff and that would eliminate our concerns on that
9 particular issue.

10 We absolutely understand the need that
11 individual State Commissions play in the area of consumer
12 protection, and I want to just point out that this time we
13 think that the FCC rules are comprehensive and they did it
14 right and the additional requirement proposed by the
15 Staff's rule do not justify the means.

16 The increased operational and administrative
17 costs that it would place on to companies like Embarq far
18 outweigh any benefits the consumers would receive from
19 additional protection. So we ask you to take that into
20 consideration.

21 And one more factor I'd like for you to take
22 into consideration is if companies that are regulated by
23 the Missouri Commission, such as Embarq, have to comply
24 with State-specific rules, where other companies that do
25 operate in Missouri outside the jurisdiction of the

1 Commission don't have to incur the same operational and
2 administrative costs, it definitely puts companies like
3 Embargo at an unfair cost advantage and unfair competitive
4 advantage in the marketplace.

5 So the recommendations made forth by MTIA,
6 as well as AT&T, to remain consistent with the FCC are
7 fully supported by Embargo.

8 And this summarizes my comments, but I will
9 be available for any questions the Commissioners have.

10 A point of correction. Unintentional. I
11 apologize. I got my words messed up.

12 But the MTIA's position, as well as
13 Embargo's, would be intentionally gained access, not
14 unintentional.

15 Thank you.

16 JUDGE DALE: Thank you, Mr. Idoux.

17 Yes.

18 MS. DIETRICH: Your Honor, just as a point
19 of clarification.

20 When Mr. Bub was discussing Staff's proposed
21 change to 4 CSR 240-33.160(4)(C)(8), Staff had proposed a
22 change to remove the language, and subject to, and replace
23 it, according to the written comments on page 4, to the
24 following. The word "or" was inadvertently left off of
25 that proposed change.

1 So it should read that a telecommunications
2 company also may state in the notification that it may be
3 compelled to disclose CPNI to any person upon affirmative
4 request by the customer or following appropriate
5 authentication procedures as described in Section 5 below.
6 And I think that will address AT&T's concern.

7 MR. BUB: Your Honor, this is Leo Bub for
8 AT&T. That additional word should address the concern
9 that we raised. I think it's now clear what's intended by
10 the rule.

11 While we're at it, let me also add one more
12 thing just as a follow-up to one of the points that
13 Mr. Idoux from Embarq was discussing.

14 This was expanding the notification period
15 from seven to fourteen days. And providing the
16 notification under seal, we also believe that would be
17 helpful.

18 We would also ask the Commission to consider
19 adding a caveat, so that, remember, under the FCC's rules,
20 carriers are prohibited from disclosing this information
21 even after that seven-day period, to withhold that
22 information by the FBI or Secret Services, so that they
23 could continue an investigation and perhaps prosecution.

24 So what we would recommend is consider
25 adding some words, like, unless the carrier is directed

1 otherwise by law enforcement, and I think that would solve
2 the problem.

3 JUDGE DALE: Thank you.

4 Is there anyone else who wishes to testify
5 concerning the rule?

6 In that case, if we can have all of the
7 people who are under oath to come and sit at these tables
8 up here, and then you can just all be subject to
9 Commission questions.

10 Thank you.

11 Commissioner Murray.

12 COMMISSIONER MURRAY: Yes. I guess I'll
13 start with Mr. Cecil.

14 What is the purpose of the Public Service
15 Commission receiving notification of a breach?

16 MR. CECIL: Good morning, Commissioner.

17 COMMISSIONER MURRAY: Good morning.

18 MR. CECIL: The Public Service Commission
19 was specially created by the Legislature to ensure that
20 the public interest is protected, and specifically in
21 385-- let me look that up. Thank you -- 392.185,
22 Subsection 9, to protect consumer privacy.

23 If there are State laws that had been
24 violated and the Commission is not informed or is not
25 aware of it, then it may not be able to uphold that

1 section -- those duties that the Legislature has conferred
2 upon you.

3 COMMISSIONER MURRAY: All right. So if a
4 breach was inadvertent or unintentional, that wouldn't be
5 violating any law, would it?

6 MR. CECIL: Well, it may. It may be
7 unintentional but consumers may still suffer harm.

8 COMMISSIONER MURRAY: And how will the
9 consumers be protected if the Public Service Commission
10 receives notice of somebody inadvertently sticking two
11 bills together in an envelope, for example?

12 What happens with the consumer after the
13 Public Service Commission receives notification?

14 MR. CECIL: Well, I think several things may
15 happen. There may be other agencies that might become
16 involved with such an event.

17 Off the top of my head, I can just see that
18 we've been notified through several television commercials
19 that you should shred your bills.

20 If I receive somebody else's phone bill or
21 they receive mine, there is some personal information that
22 might expose me to some identity theft risk.

23 So some other agency might become involved
24 or should be notified as well.

25 COMMISSIONER MURRAY: So in other words, the

1 Public Service Commission would notify the customer and
2 then maybe notify the Attorney General Office, or what
3 would happen?

4 MR. CECIL: Well, I'm not certain that the
5 Public Service Commission would notify the customer, but
6 it may be that the Public Service Commission would have an
7 interest to notify the Attorney General in such a case.

8 COMMISSIONER MURRAY: If a customer service
9 representative at the telephone company, for example, read
10 something off of another person's bill inadvertently to a
11 person over the telephone -- I mean, are you thinking of
12 memorializing all of these things and then somehow -- I'm
13 just trying to figure out what is the advantage -- what
14 would be the advantage that would outweigh the
15 requirements of recordkeeping that would be imposed upon
16 the carriers in order to provide every inadvertent breach
17 of a CPNI?

18 MR. CECIL: I agree. I think that the list
19 of items could be very -- a comprehensive list could be
20 immense, but I think that we need to weigh the interests
21 of the customer who may be harmed as well.

22 And I do believe that the carriers under
23 Federal regulations do maintain records. They may not be
24 as comprehensive as we understand, but I believe that
25 these records do exist, and we're not asking that any

1 additional records be kept.

2 COMMISSIONER MURRAY: So how do they
3 maintain records? Do they have every customer
4 representative who makes a phone call that perhaps -- or
5 is on the phone with a customer and perhaps has stated
6 something that might give him information about another
7 customer, how do they maintain those records?

8 MR. CECIL: In 4 CFR 64.209, Sub e, the
9 FCC requires an annual certification document to be filed
10 with -- by the carriers with -- with the FCC.

11 They have some suggested language, and it is
12 suggested language. But in that suggested language they
13 ask questions such as has the company has/has not taken
14 any actions, proceedings, instituted petitions filed by a
15 company either at a State Commission, the court system and
16 so on with respect to data brokers, within the past year.

17 Companies have to report on any information
18 that they have with respect to the processes -- to the
19 processes pretexters are using to attempt to access CPNI
20 and what steps they are taking. If affirmative, provide
21 explanation of any actions taken.

22 COMMISSIONER MURRAY: And pretexters are
23 those who are attempting --

24 MR. CECIL: Correct.

25 COMMISSIONER MURRAY: -- intentionally to

1 access another's information. Is that correct?

2 MR. CECIL: Correct. Yes.

3 COMMISSIONER MURRAY: So how would an
4 inadvertent revelation of something be an action to
5 protect against pretexting?

6 MR. CECIL: Well, Commissioner, what I'm
7 trying to get at is that the companies are keeping records
8 in order to respond to the FCC's requirement for
9 information.

10 COMMISSIONER MURRAY: Keeping records of
11 anything that's intentional. Is that correct?

12 MR. CECIL: Of intentional, yes. But it
13 also goes on to ask for records that the company has or
14 has not received for customer complaints in the past year
15 concerning unauthorized release of CPNI.

16 COMMISSIONER MURRAY: And that's where a
17 customer has actually complained that --

18 MR. CECIL: Yes, ma'am.

19 COMMISSIONER MURRAY: -- that something has
20 been revealed?

21 MR. CECIL: Yes, ma'am.

22 COMMISSIONER MURRAY: But that's just not an
23 inadvertent mistake that a customer service representative
24 might have made over the telephone. That's not
25 necessarily a record of all of those, is it?

1 customer -- or excuse me -- the company for inadvertent
2 actions such as two bills stuck together or transposing a
3 phone number, and I think asking them to maintain all that
4 information would create a fiscal impact that we did not
5 account for.

6 But part of the Commission's responsibility
7 would be to determine what is inadvertent versus what is
8 intentional.

9 And so perhaps the best way to do this would
10 be to define inadvertent as, you know, the Commission is
11 not looking for reports on mistakes made by the customer
12 service representative or, you know, billing errors, bills
13 sent out that are stuck together or sent to the wrong
14 address, transposition errors, things like that, but is
15 looking for notification of events that have the potential
16 of harming the consumer by releasing their -- I mean, most
17 people, if they receive a copy of a customer's bill,
18 they're going to say, oops, this isn't my bill or send it
19 back and go get rid of it. They're not going to be, you
20 know, scrutinizing and saying, oooh, what can I get off of
21 this?

22 And I think that's where the distinction has
23 to be made is trying to come up with a definition, and
24 perhaps the best way to do is it to also add a definition
25 of inadvertent or put it in somehow in the definition of

1 breach.

2 COMMISSIONER MURRAY: So why do you have a
3 problem with the way the FCC used intentional?

4 MS. DIETRICH: I think the intentional to me
5 implies that the company intentionally released the
6 information.

7 And that may be a case where, you know, they
8 have an employee that says, you know, I'm going to see
9 what I can do with this information and release it.

10 But a lot of the instances that they use the
11 intentional is actually somebody contacting them.

12 COMMISSIONER MURRAY: But it says -- this
13 talks about a person without authorization or exceeding
14 authorization has intentionally gained access to it.

15 I mean I think it's pretty clear it's
16 talking about the person who is getting the access, not
17 the company.

18 MS. DIETRICH: And I guess in my view I'm
19 not sure that that covers all of the instances that the
20 information may be released other than just mistakes, and
21 so it seems like there should be some kind of distinction
22 there.

23 COMMISSIONER MURRAY: Well, I think it's
24 going to be very difficult to come up with language that
25 would describe every situation there, but it appears to me

1 that the FCC used intentionally to indicate that what
2 they're looking for is someone out intentionally trying to
3 get information about a customer's records, and they want
4 to know any time that has occurred.

5 MS. DIETRICH: Right. And I think we're
6 saying the same thing.

7 I guess I'm just not reading it the same way
8 as you are, as clearly as you are.

9 COMMISSIONER MURRAY: But if you leave out
10 the word "intentionally," then they do have to indicate
11 every inadvertent situation as well, the ones like you
12 just described, if an extra bill --

13 MS. DIETRICH: Right.

14 COMMISSIONER MURRAY: -- was in someone
15 else's bill.

16 MS. DIETRICH: And that was not our intent.
17 Our intent was just to make sure that -- like, for
18 instance, if I got your password and I obtained your
19 information, the company may not know that.

20 And so, I mean, we were just trying to be
21 more encompassing than what it sounded like the FCC was
22 with intentional, to make sure that the customer was
23 protected.

24 COMMISSIONER MURRAY: But in reading this
25 again, do you agree that the language applies to the

1 person who gains access, doing so intentionally?

2 MS. DIETRICH: I'm still trying to find it.

3 Just one second.

4 COMMISSIONER MURRAY: It's

5 240-33.160(3).

6 MS. DIETRICH: I guess the situation, like,

7 for instance, the two bills stuck together, that could be

8 seen as a person receiving information without

9 authorization.

10 To me the word "intentionally" is still

11 limiting, but I do agree that it does focus on the person.

12 I can see where it does focus on the person and not the

13 company.

14 COMMISSIONER MURRAY: And when you say it's

15 limiting it, what does it limit it to? Just those who are

16 seeking intentionally to get access without authorization

17 or in excess of their authorization?

18 MS. DIETRICH: Can you repeat that? I'm

19 sorry.

20 COMMISSIONER MURRAY: Well, you said you

21 still think the word "intentionally" is limiting.

22 MS. DIETRICH: Uh-huh.

23 COMMISSIONER MURRAY: Do you think it limits

24 it only to those who are intentionally seeking to gain

25 access without authorization or in excess of their

1 authorization?

2 MS. DIETRICH: I think it limits it to those
3 people, but I think it also limits -- the way I'm reading
4 it -- it also limits the way they obtained that
5 information.

6 I'm not sure that -- with the additions that
7 the FCC has added, like, for instance, online
8 verifications and things like that, the word "intentional"
9 to me limits, that it's more, like, focused on the
10 pretexting, where they have this outright desire to go
11 after a bunch of customers; whereas, with the additions
12 of -- you know, I can find out your password perhaps and
13 get your information but I'm not out to get everybody's
14 information. That's where I see it limiting is the extent
15 to which the information is gained.

16 COMMISSIONER MURRAY: I lost you there.

17 How are you focusing on one person's
18 information versus everyone's information?

19 MS. DIETRICH: Well, I guess, you know, part
20 of this is reading what the FCC has put around us in its
21 Order, and it's largely focusing on pretexting, but it
22 acknowledges there are other ways that CPNI can be
23 obtained inappropriately.

24 And I guess that's where I see the
25 limitation is not -- is these other means. I don't think

1 it fully addresses all of the means.

2 COMMISSIONER MURRAY: Well, then, how would
3 the rule be written so that companies do not have to keep
4 records and provide a report to the Commission every time
5 someone inadvertently gives out some information?

6 MS. DIETRICH: And I think that goes back to
7 what I started with is leave out the word "intentional"
8 but define the word "inadvertent," saying that you do not
9 have to report consumer rep -- or customer service rep
10 errors. You do not have to report billing errors. You do
11 not have to report transposition that the customer service
12 rep -- I mean, basically if it's an error -- if it's a
13 mistake by the company, a customer service rep, because
14 of, you know, means like that, then those don't have to be
15 reported.

16 But if the information is released to
17 someone other than the customer for means other than your
18 mistakes, then those have to be reported to the
19 Commission, so the Commission can make sure that there
20 isn't some kind of larger violation, that there isn't some
21 kind of protection that the consumer is not being awarded.

22 COMMISSIONER MURRAY: Okay. I don't want to
23 belabor this, but I am trying to understand what it is
24 you're trying to protect against missing.

25 And I don't see much difference there other

1 than the fact that you may be -- it appears that you may
2 be trying to guard against, for example, a company
3 employee giving information to someone who wasn't
4 intentionally seeking it for purposes of using it against
5 a customer.

6 I'm just trying to understand why there
7 would ever be an instance in which this would be gained
8 other than intentionally by the person who was getting the
9 information.

10 MS. DIETRICH: I guess I'm not sure what
11 more to say.

12 I mean, I think you're probably right that
13 it is, in effect, protecting the company by making sure
14 that they're not penalized in any way for their mistakes,
15 but then I think it also narrows the scope of what is
16 released to a customer that -- or it more clearly defines
17 the scope of what's released to a customer that's not
18 harmful versus what is harmful because mistakes do occur.

19 COMMISSIONER MURRAY: Okay. I'm going to
20 take this just a little bit further, because with your
21 suggestion of leaving it without the word "intentionally"
22 but then defining "inadvertently" and setting out those
23 areas, those things which they do not have to report, what
24 would be the additional things they would have to report
25 that they don't have to under the language with the word

1 "intentionally" included? Just give me a couple of
2 examples.

3 MS. DIETRICH: I can't really think of
4 anything off the top of my head. It's more a protection.

5 COMMISSIONER MURRAY: Protection for what,
6 from what?

7 MS. DIETRICH: Protection to make sure that
8 all instances are covered.

9 COMMISSIONER MURRAY: But give me an example
10 of an instance it would be covered that isn't.

11 MS. DIETRICH: I think I go back to the
12 password. I mean, to me that -- that's a good example.

13 When we filed comments with the FCC, we
14 noted concerns with the password method, saying that that
15 password can be a burden for customers. They forget them,
16 you know, things like that.

17 And so if I as a customer, if I happen to
18 figure out my -- if I happen to figure out another
19 customer's password and get their information, the company
20 may realize that the wrong person is getting into this
21 customer's account, but I may not be doing any harm with
22 it. I just may be nosey.

23 And so if the company finds out that a
24 password has been violated, then they would notify the
25 Commission that, hey, you know, we're aware of this

1 particular customer's security being violated because
2 their password was breached and, you know, we're taking
3 actions to make sure that the customer changes their
4 password or whatever the case may be.

5 COMMISSIONER MURRAY: If the person is using
6 the password, wouldn't you assume they gained access to it
7 intentionally?

8 MS. DIETRICH: They -- they -- they
9 potentially -- potentially intentionally gained access to
10 what Ms. Brueggemann just pointed out. It also talks
11 about used or disclosed.

12 I think some of this falls into a legal
13 argument, and so I'm trying to give you examples, but I
14 don't know the legal definition of intentional.

15 COMMISSIONER MURRAY: So the instance that
16 you just gave, if intentional were in there, if that
17 person has used it, they're obviously intentionally using
18 it, so the company would already have to disclose that
19 with -- if it were -- if the language read intentionally?

20 MS. DIETRICH: I think it's a fine line. It
21 may or may not need to be clarified.

22 COMMISSIONER MURRAY: I just think --

23 MS. DIETRICH: They potentially gained
24 access to. They didn't necessarily intentionally use or
25 disclose it.

1 COMMISSIONER MURRAY: So you don't think
2 intentionally also describes used or disclosed?
3 MS. DIETRICH: No. I think it does.
4 COMMISSIONER MURRAY: And a person using
5 another's password isn't doing so intentionally?
6 MS. DIETRICH: I think it has the
7 possibility. I mean, it could be a mistake or it could be
8 intentional.
9 COMMISSIONER MURRAY: I mean, they could be
10 using some other person's password without intending to do
11 so?
12 MS. DIETRICH: Maybe they just happened to
13 come across it. I don't know.
14 COMMISSIONER MURRAY: But if they use it --
15 MS. DIETRICH: If they use it --
16 COMMISSIONER MURRAY: -- don't they intend
17 to use it?
18 MS. DIETRICH: If they use it with that
19 customer's account, I think there is an intent on that
20 person's part.
21 COMMISSIONER MURRAY: And the company would
22 have to report that. Correct? That would be a breach --
23 MS. DIETRICH: Correct?
24 COMMISSIONER MURRAY: -- whether the word
25 "intentionally" is in there or not?

1 MS. DIETRICH: Correct.

2 COMMISSIONER MURRAY: Okay. So you still
3 haven't given me an example of where it would be covering
4 anything other than inadvertent disclosures by leaving the
5 word "intentionally" out.

6 MS. DIETRICH: I can't think of any examples
7 off the top of my head. And I think with, you know, our
8 discussion of some of the possibilities and then also with
9 the clarification that we are -- we, Staff and the
10 Commission, would be looking at intent on the side of the
11 person accessing the information as opposed to trying to
12 tie some kind of intent to the Company, I think Staff
13 would be okay with leaving the word "intentionally" in
14 there.

15 COMMISSIONER MURRAY: Thank you. That
16 was -- that took a while, but I think, really, when we're
17 doing rulemaking, we have to be aware of the inadvertent
18 consequences of language that isn't necessary.

19 Now I will ask just a couple more questions,
20 which I know Commissioner Clayton will be happy I only
21 have a couple more.

22 COMMISSIONER CLAYTON: No. Take your time.

23 COMMISSIONER MURRAY: I wanted to ask
24 Mr. Idoux and Mr. Bub about -- I think you already covered
25 it.

1 The additional language that Staff has
2 suggested regarding fourteen days versus seven and the
3 highly confidential designation. Does that clear up any
4 problem with that provision in your opinion?

5 MR. IDOUX: It is an extra notification step
6 that Embargo would have to implement for Missouri only. My
7 preference would be none.

8 However, our main issue was the potential
9 conflict with the seven business days for law enforcement,
10 and we'd be willing to accept the fourteen days under the
11 condition that we could file under seal. That would be
12 acceptable.

13 COMMISSIONER MURRAY: All right. What is it
14 that -- I'm sorry. What is it that is having to be filed
15 under that provision?

16 MR. IDOUX: A copy of the notice with the
17 Missouri Commission.

18 COMMISSIONER MURRAY: A notice of what?

19 MR. IDOUX: Of breach.

20 Okay. It's the last section of the proposed
21 rule, Section 8.

22 COMMISSIONER MURRAY: But that already has
23 to be filed with the FCC. Is that correct? It does not?

24 MR. BUB: No, Your Honor, it's not filed
25 with the FCC. It's only filed with the law enforcement

1 agencies, with the FBI and the Secret Service.

2 COMMISSIONER MURRAY: Okay.

3 MR. BUB: And our concern -- and I think the
4 FCC's concern there was they didn't need to know that
5 information, but they wanted to get that information in
6 the hands of law enforcement who would be able to do
7 something with it.

8 Because I think at the same time that this
9 rulemaking was going on, there was a Federal law passed
10 that makes pretexting a criminal offense.

11 So what they're trying achieve in the rule
12 is to get that information captured, getting it to law
13 enforcement, so law enforcement can go after the
14 pretexters.

15 And the reason for the delay is to give law
16 enforcement an opportunity to investigate it first, and if
17 they decide it's something that they're interested in
18 going after, you know, if it's some big criminal
19 enterprise from their perspective, then they would launch
20 an investigation.

21 They would ask the telecommunications
22 company not to disclose that, so as to tip off the
23 pretexters that the Federal investigators are going after
24 them.

25 And we think what Staff is proposing here

1 helps, in making it fourteen, but we still have that one
2 concern, that if we are directed by the FBI or the Secret
3 Service not to publicly disclose that for fear of
4 jeopardizing their investigation, we would prefer that we
5 hold off notifying the Commission.

6 And from our perspective, we're not real
7 sure why that information needs to go to the Commission
8 because it's not like the Commission is -- you know, it
9 can't prosecute a pretexter, probably wouldn't. It just
10 seemed like it was information only.

11 And we were wondering what the need for
12 separate Commission notification is, just like Mr. Idoux
13 here. I think we're in the same spot. It's just another
14 step, where the FCC's rule gets that information into the
15 hands of the FBI and the Secret Service, who are the ones
16 designated to crack down on the pretexting.

17 COMMISSIONER MURRAY: So your language, your
18 suggested language, unless the carrier is directed
19 otherwise by law enforcement, would at least protect you
20 from a situation where you were told by two different
21 government agencies to do opposite things. Right?

22 MR. BUB: Yes.

23 COMMISSIONER MURRAY: And it would not be
24 creating an extra administrative burden, would it,
25 necessarily?

1 MR. BUB: Well, it would create the extra
2 administrative burden because we only report it to law
3 enforcement. We don't report it to the FCC. This new
4 rule would require us to also report it to the Missouri
5 Commission.

6 COMMISSIONER MURRAY: Yes. Well --

7 MR. BUB: So that's the extra part.

8 COMMISSIONER MURRAY: -- fourteen days
9 later?

10 MR. BUB: Our first preference is not to do
11 it, but if it's something that the Commission decides that
12 it needs to have, then the extra steps that we've just
13 been discussing would help square it with Federal law.

14 COMMISSIONER MURRAY: All right. Think I
15 think my last question is for Staff.

16 And, I guess, Ms. Dietrich, you're doing so
17 well in answering these questions, I might as well let
18 you.

19 What is the purpose of the Commission
20 receiving that information?

21 MS. DIETRICH: Largely because this is a
22 State law, and it would be a violation of State law if
23 that information was released.

24 Notifying the Federal law enforcement,
25 satisfying the violation of the Federal requirements, but

1 there should also be some sort of notification that State
2 law has been violated.

3 I would also add that the way the FCC's
4 order is written, it's a link on the FCC's website that
5 they use to notify the law enforcement authorities, and
6 there is some language in the FCC's order that talks about
7 after this seven-day period in their case passes, if it's
8 okay to release the information, then I don't know the
9 exact language, but it's something to the effect that the
10 FCC can also request the information.

11 So the FCC doesn't get it upfront, but they
12 haven't completely closed the door, that they might ask
13 for it.

14 And then just in response to Mr. Idoux. He
15 keeps saying filing it under seal. We were not
16 envisioning this information being filed in a case, but in
17 our suggested changes to the language, we clarified an
18 electronic e-mail.

19 There is also a possibility of people who
20 would feel more comfortable, that we can set up a section
21 on EFIS, that it would be submitted to EFIS as a
22 confidential filing as opposed to the e-mails, but we
23 weren't envisioning it filed in a case-type thing.

24 COMMISSIONER MURRAY: Okay. And then once
25 it is electronically e-mailed highly confidential to the

1 Commission, then what happens to it?

2 MS. DIETRICH: Someone who receives the
3 notification would let the Commission know that there was
4 a breach, and then at that point, you know, it would be up
5 to the Commission whether they wanted Staff to investigate
6 it further or, you know, just make note of it.

7 It's at this point a notification, and the
8 Commission would have the ability to decide how to pursue
9 the information, if at all.

10 COMMISSIONER MURRAY: And the Federal -- the
11 way it is done at the Federal level is that law
12 enforcement gets notified first, Federal law enforcement,
13 of a violation of Federal law, and then following that the
14 FCC can request the information.

15 If we're talking about being concerned about
16 a violation of State law, why wouldn't the notification go
17 to State law enforcement versus the Commission?

18 MS. DIETRICH: Well, I mean, that's a
19 possibility, but I think that's out of the purview of a
20 Commission rulemaking.

21 COMMISSIONER MURRAY: So is the thought of
22 Staff that the Commission receiving it upfront before
23 State law, probably before State law enforcement would
24 receive it, that the Commission then might be instrumental
25 in getting it to State law enforcement?

1 MS. DIETRICH: The Commission could request
2 that Staff inform either a State law enforcement agency or
3 perhaps the Attorney General, depending on the case and,
4 you know, the different authorities.

5 COMMISSIONER MURRAY: Who requires the
6 companies to report breaches to Federal law enforcement?

7 MS. DIETRICH: It's in the Federal Rules, in
8 the rules established by the FCC. So I assume that's the
9 FCC that requires it.

10 COMMISSIONER MURRAY: I guess I'll ask
11 counsel.

12 Why couldn't -- if the FCC can order
13 companies to report things to law enforcement, why can't
14 the State Commission order companies to report something
15 to State law enforcement?

16 MS. BRUEGGEMANN: Do I need to be sworn,
17 Judge?

18 JUDGE DALE: Let's go ahead and do it.

19 (Witness sworn/affirmed.)

20 JUDGE DALE: Thank you.

21 MS. BRUEGGEMANN: And I don't see a problem
22 in theory with us making a statement that it has to be
23 reported to a law enforcement agency, but I would think
24 that we would need the agreement of that law enforcement
25 agency or a memorandum of understanding or something to

1 that effect to make sure it's a collaboration in the
2 spirit of goodwill.

3 COMMISSIONER MURRAY: I'm just trying to
4 think out loud. If we start receiving information about
5 breaches that are violations of State law or could
6 potentially be violations of State law, it's not clear
7 what we'll do with them?

8 MS. BRUEGGEMANN: No, it's not clear because
9 it's unknown what the type of breach would actually be.

10 If it's something that we would have to go
11 enjoin an action because it's some certain person
12 continuously doing it or if they're acting in fraud, then
13 we would have the decision to report it to the Attorney
14 General's Office or to whatever county prosecutor may be
15 in the middle of that investigation or become a part of
16 that investigation, or maybe it's completely civil in
17 nature.

18 If it's outside the purview of the
19 regulation we have and it's really just a private matter,
20 then we may not be able to do something with it.

21 But if it's also a violation of our laws or
22 rules, billing practices, customer service, you know, and
23 would relate back to the certificate of service, something
24 like that, then that would be part of the investigation
25 and the results presented to the Commission for their

1 decision.

2 COMMISSIONER MURRAY: This is a report of a
3 breach, correct, where someone seeking another's CPNI
4 information has intentionally sought it or used it or
5 disclosed it, so it's not really something that -- and
6 it's going to be reported by the carrier?

7 MS. DIETRICH: Or reported in our rule to
8 us. But without that notification requirement, it
9 wouldn't be reported to us. It could be reported to
10 customers.

11 I don't think there is an obligation under
12 this rule that it's actually reported to the customer. I
13 would think that's a liability issue for the company to
14 determine, if they need to report that to the customer,
15 but I don't think there's an affirmative obligation in the
16 FCC's rule.

17 So there's no guarantee that we would ever
18 be notified of this breach within the FCC's rules in my
19 opinion.

20 COMMISSIONER MURRAY: Okay. But what I'm
21 trying to get at is what are we going to do with the
22 notification? What's the purpose of us being notified?

23 Are we going to notify the customer? Are we
24 taking on that responsibility? Are we taking on the
25 responsibility of determining whether there is a violation

1 of State law?

2 I mean, if we're saying we need the
3 information, we must be saying we need to do something
4 with it.

5 MS. DIETRICH: I think it depends on what
6 the information is that we receive. And until we have had
7 a series of these notifications to see what type of
8 situations and issues are coming up, we can't actually
9 know what the resulting steps are.

10 This is a case of somewhat first impression
11 on this type of notification. So we didn't want to
12 presume to put in language into the rule of what the next
13 steps would be. We think that's premature at this point,
14 until we have a little bit of experience reviewing and
15 looking at it.

16 COMMISSIONER MURRAY: Okay. Does anybody
17 else have -- Mr. Bub.

18 MR. BUB: Thank you, Your Honor.

19 Just to help with a cite to the FCC's rules,
20 Section 64.2011, Subparagraph C. There is a provision for
21 customer notification of the types of breaches we're
22 talking about here.

23 It says, after a telecommunications carrier
24 has completed the process of notifying law enforcement,
25 pursuant to paragraph B, it shall notify its customers of

1 a breach of those customers' CPNI.

2 So the way it would work is we first notify
3 law enforcement, and then after the seven-day period, then
4 not only are we permitted, but we're required, to notify
5 our customer that their CPNI has been breached.

6 If law enforcement tells us to wait, then we
7 would. But once that process with law enforcement is
8 completed, then we're required to notify the customer.

9 And I don't know if it would help here or
10 not, but one thing we need to keep in mind is that this
11 whole Federal rule came into existence as a result of a
12 petition that was filed at the FCC by the Electronic
13 Privacy Information Center. I think they call themselves
14 EPIC, E-P-I-C, which is a national privacy watchdog group.

15 And they filed a petition, and that caused
16 the FCC to investigate carrier practices on how they
17 secure CPNI.

18 And as part of that proceeding EPIC had
19 proposed specific requirements, and it's my understanding
20 from reading the FCC's Order that these -- the result --
21 the resulting FCC modifications were what EPIC had
22 suggested.

23 I was looking for a cite to the FCC's Order
24 so we could look at that.

25 COMMISSIONER MURRAY: A modification, for

1 example, to notify the customer, do you think?

2 MR. BUB: The whole ball of wax of what the
3 changes -- that the FCC made to its rules were what EPIC
4 had suggested at page 8 of the FCC's Report and Order and
5 Further Proposed Rulemaking. It released it April 2nd,
6 2007.

7 In paragraph 12 it says, in this Order we
8 adopt necessary protections put forth by EPIC to ensure
9 the privacy of CPNI.

10 So, you know, there was this national
11 watchdog group and the FCC carriers involved in balancing
12 what needed to be addressed. Costs on the carriers,
13 customers privacy, all that was balanced and weighed by
14 the FCC, and they came out with these rules.

15 And, you know, that's why in our view, you
16 know, a lot of discussion we're having today I'm sure took
17 place at the national level, and this is where they came
18 out and it's where this consumer watchdog proposed would
19 come out. And that's where we are.

20 So if it's any comfort, the rules that are
21 in the FCC's revisions came from that watchdog group that
22 protects consumer privacy.

23 COMMISSIONER MURRAY: So whenever there is a
24 breach, the consumer is notified of it?

25 MR. BUB: That's correct. We notify law

1 enforcement. Once law enforcement completes its process,
2 whether they do nothing and the seven day passes, then
3 we're required under the FCC's rule to directly notify the
4 customer.

5 COMMISSIONER MURRAY: So under this new
6 proposed language in Missouri, then, you would -- seven
7 days after you notify the customer, you would then notify
8 the Missouri Public Service Commission, who might -- I
9 don't know what with the information, because apparently
10 Federal law enforcement has had it for two weeks at that
11 point, the customer has had it for one week at that point.

12 MR. BUB: Yes.

13 COMMISSIONER MURRAY: So how would -- I
14 guess I'll direct this to Staff.

15 How would our getting notice of it protect
16 the consumer?

17 MS. DIETRICH: Well, first of all, I don't
18 think it's necessarily on the seventh day the customer
19 gets notice and on the fourteenth day the Commission gets
20 notice.

21 After seven days, the customer receives
22 notice unless told otherwise, and within fourteen days, or
23 something like that, the Commission receives notice. So
24 the notice could be simultaneous that this breach occurred
25 and we have notified our customers.

1 One thing that's in our rule language is
2 that they keep records of the breach and notification is
3 made to the customers so that we anticipate that
4 notification to the customers will be required.

5 And so they're letting the Commission know
6 the breach so the Commission can proceed as it sees fit,
7 whether it be, like we discussed earlier, to notify law
8 enforcement agencies or the Attorney General, that type of
9 thing.

10 And just to, along those lines, your
11 discussion about, you know, can the Commission just
12 include in the rule, tell the communication -- tell the
13 communication companies, tell the law enforcement
14 agencies.

15 I don't know legally whether they can or
16 not, but as Mr. Bub was going through the various FCC
17 citations, there are mentions in the FCC's rule where the
18 Department of Justice was part of their rulemaking, so
19 they would have been providing input all along in part of
20 those discussions.

21 COMMISSIONER MURRAY: And I assume that we
22 didn't contact and get --

23 MS. DIETRICH: No.

24 COMMISSIONER MURRAY: -- any advice from law
25 enforcement agents?

1 MS. DIETRICH: No, we did not.

2 COMMISSIONER MURRAY: All right. Any other
3 comments to what I've asked? Otherwise, I'll pass it.

4 Thank you.

5 COMMISSIONER CLAYTON: Ms. Dietrich, I just
6 wanted to ask you if the language that can be found in
7 House Bill 1779 in the General Assembly right now, if that
8 language passes, what is the impact on our ability to
9 implement rules relating to privacy enforcement, including
10 this rule and our existing rule?

11 MS. DIETRICH: The way the language in House
12 Bill 1779 is written right now, there is -- there are
13 provisions that the Commission would still have authority
14 over consumer-protection-type issues for carriers that are
15 noncompetitive, for carriers -- the way it's written right
16 now, for carriers that are currently certificated as
17 competitive carriers.

18 But under the new language, carriers that
19 move from noncompetitive to competitive or get
20 certificated as competitive after the date of the
21 legislation, they would not be subject to Commission --
22 several Commission-consumer-quality-type things and
23 billing issues, and I think this would be included in
24 those -- that subset of customers would not be -- or
25 excuse me -- that subset of companies would not be subject

1 to this rule.

2 COMMISSIONER CLAYTON: Okay. So would it be
3 fair to say that if the language that is in House
4 Bill 1779, whether that bill passes or if language that is
5 included within it right now passes, basically this rule
6 and the existing privacy rule would have no applicability
7 to the three largest ILECs in our state, as well as all
8 CLECs?

9 MS. DIETRICH: It wouldn't apply to CLECs
10 that get certificated after the legislation goes into
11 effect. It would not apply to the three largest ILECs if
12 they are able to move to competitive carriers, which it's
13 likely that shortly they would be able to.

14 COMMISSIONER CLAYTON: They'd meet that
15 definition under House Bill 1779?

16 MS. DIETRICH: Right, or shortly after.

17 COMMISSIONER CLAYTON: So basically that
18 would leave the small carriers would be subject to these
19 provisions and maybe some CLECs and that's it?

20 MS. DIETRICH: Under the provisions of the
21 House bill, it's likely that several of the small LECs
22 could even be removed from this protection.

23 And then there also is a request for waiver
24 in there, where any of the carriers could come in. And if
25 they show they have competition somewhere, I believe it is

1 just have competition, they could be relieved from this
2 also.

3 COMMISSIONER CLAYTON: So all of this
4 discussion may not have any bearing one way or the other
5 how the Commission decides if that legislation passes for
6 the majority of customers in the State of Missouri?

7 MS. DIETRICH: Correct.

8 COMMISSIONER CLAYTON: Thank you.

9 JUDGE DALE: Commissioner Jarrett, do you
10 have any questions of Ms. Dietrich?

11 COMMISSIONER JARRETT: No.

12 COMMISSIONER MURRAY: Could I ask one more
13 question of Natelle before she leaves?

14 If that were the case, if that legislation
15 passes and this bill were not able to be -- or this rule
16 were not able to be enforced against most of the carriers
17 in Missouri, that wouldn't affect the fact that there is
18 the FCC rule in place today which is virtually the same,
19 would it not?

20 MS. DIETRICH: No, it would not. The
21 Federal law would remain intact.

22 COMMISSIONER MURRAY: All right. Thank you.

23 JUDGE DALE: Thank you, Ms. Dietrich. You
24 are excused.

25 MS. DIETRICH: Thank you.

1 (Ms. Dietrich excused.)

2 MS. BRUEGGEMANN: Judge, may I make one
3 correction to my statement?

4 I did find a cite where the FCC's rule under
5 64.2011 that Mr. Bub I think was referring to, that in the
6 body of it, under C, that does require the notification of
7 customers of a breach of those customers, those specific
8 customers. So I want to make sure that cite gets into the
9 record.

10 JUDGE DALE: And could you repeat it?

11 MS. BRUEGGEMANN: Section 64.2011,
12 Subsection C.

13 JUDGE DALE: Thank you.

14 We'll proceed with questions from
15 Commissioner Jarrett.

16 COMMISSIONER JARRETT: Yeah. I had a
17 question regarding the reporting requirements under the
18 FCC. You had talked about some sort of reporting.

19 Could you repeat that?

20 Yes. I'm sorry, Mr. Bub.

21 MR. BUB: Sure, Commissioner.

22 What we were talking about was reporting of
23 a breach if we learned that a pretexter had acquired CPNI
24 of a customer, to report that to the FBI and to the Secret
25 Service.

1 And then we're to let them have it for seven
2 days, and if they do nothing -- if they tell us nothing
3 after seven days, then we would report it to the customer.

4 If the Secret Service or the FBI tells us
5 during that seven-day period that they have it that
6 they're going to initiate an investigation, then they
7 would tell us not to disclose it further until we're told
8 we can.

9 And, you know, I guess for them to further
10 investigate, maybe for them to set up some type of sting.
11 I don't know. But whatever it is that would lead to some
12 type of prosecution.

13 And I think their goal would be to acquire
14 evidence against the pretexters. Once they have what they
15 need, they would tell us and then we would disclose it to
16 customers, once they give us the word. Then the FCC's
17 rule requires us to disclose it to customers.

18 COMMISSIONER JARRETT: And maybe I
19 misunderstood. But is there some sort of, like, annual
20 report or quarterly report that you filed with the FCC
21 with that information?

22 MR. BUB: Yes, there is. Yes, there is. I
23 misunderstood your question then.

24 There is an annual certification that we're
25 required to give. I'll just read you the FCC's summary of

1 the annual CPNI certification requirement.

2 And this is found on page 3 of the FCC's
3 Report and Order from April 2nd, 2007.

4 "Annual CPNI Certification. We amend the
5 Commission's rules and require carriers to file with the
6 Commission an annual certification, including an
7 explanation of any actions taken against data brokers and
8 a summary of all consumer reports received in the previous
9 year regarding the unauthorized release of CPNI."

10 So we're required to have -- one of the
11 things under the FCC rule is they're very detailed and
12 they've comprehensive. They require the companies to
13 appoint an officer of each corporation that's responsible
14 for customer privacy, and this certification is an officer
15 level certification.

16 COMMISSIONER JARRETT: Thank you.

17 I have a comment I'll just throw out to
18 everyone maybe to comment back on. But it seems me that
19 the Federal Rules on the breach and reporting the breach
20 clearly is a law enforcement issue, not necessarily a
21 privacy issue. It's a law enforcement issue that the FCC
22 is trying to address, because you report it to the law
23 enforcement and law enforcement takes any action that they
24 deem necessary.

25 That's a little different than protecting

1 privacy of consumers. I mean, it's interrelated but it's
2 a different focus.

3 And that's -- you know, I understand
4 Commissioner Murray's confusion on, you know, what are we
5 supposed to do with the information because we're not a
6 law enforcement agency.

7 It seems to me that some sort of report like
8 the FCC requires, where we get information about consumer
9 complaints about breaches and that type of thing, might be
10 more appropriate than this notice of intentional breaches
11 that the FCC requires that you report to law enforcement.

12 I mean, you know, obviously it seems to be
13 that our role is to make sure that the companies have
14 processes in place to protect consumer privacy, and we
15 need a mechanism to monitor that, some sort of reporting
16 requirement perhaps.

17 But I'm not sure that mirroring what the FCC
18 is doing in requiring reporting to law enforcement is
19 necessarily the way to go.

20 Any comments from anybody on that?

21 MR. BUB: Your Honor, this is Leo Bub from
22 AT&T.

23 I think you're right on when you're looking
24 at the FCC's intent in reporting the breaches. You know,
25 what they're doing is they're getting that information to

1 Federal agencies with law enforcement abilities,
2 capabilities, to do something with it. You know, they
3 have criminalized pretexting, so the FBI and so the Secret
4 Service have that statute. Then they would have the
5 resources and the expertise to be able to conduct this
6 type of an investigation.

7 One of the things that may be a concern is
8 if you have concurrent with the Federal investigation some
9 type of a State investigation. I don't know what type of
10 mechanism. They would have to coordinate theirs. But I
11 could see the potential at least for interference and
12 perhaps jeopardizing a Federal investigation.

13 What we report at the end of the year, the
14 annual certification, that may be something that we may
15 want to explore in providing because that's something that
16 is already created.

17 And I know that the -- for example, there is
18 another part of the existing State CPNI rules that require
19 us to copy the Missouri Commission whenever we notify the
20 FCC of an opt-out failure. It's a very technical thing.

21 But whatever we send to the FCC to notify
22 them that we've made a mistake with the opt-out process,
23 we, the same day, usually within an hour, we send that
24 same notification to the Missouri Commission.

25 We may want to explore -- rather than

1 focusing on duplicating that law enforcement notice, it
2 maybe might be more practical for the Commission's
3 monitoring purposes to duplicate or just -- or add a
4 requirement that we copy you on that annual certification.

5 It would probably be a highly confidential
6 submission, but that might be one thing to explore. I'd
7 have to check with our clients, but I think that would be
8 a ground to do something productive here.

9 COMMISSIONER JARRETT: Right. And, again,
10 it seems to me our focus -- I mean, obviously we have a
11 charge under State law to ensure privacy of consumers'
12 information and, you know, I take that very seriously,
13 but, you know, we need to make sure that that's our focus
14 and that we're not using mechanisms that were designed for
15 law enforcement, you know, where the FCC passes rules to
16 notify law enforcement of possible criminal breaches, you
17 know, that we have a vigorous reporting requirement and we
18 need to know what -- you know, what companies are doing to
19 protect the privacy and have some sort of monitoring
20 mechanism in place to make sure that they're complying
21 with that, but, you know, I don't know -- I don't know
22 what that is.

23 MS. BRUEGGEMANN: If I may add one quick
24 reference.

25 I had printed off, when this came out on

1 January 29th, 2008, something off of the FCC website.
2 It's -- the Enforcement Bureau provides guidance on filing
3 of annual Customer Proprietary Network Information
4 certifications. And this is essentially the template that
5 they're suggesting that companies use for the annual
6 certification filing requirement. And that's under
7 EB Docket No. 06-36.

8 What it states in that template -- and this
9 is the portion where they're suggesting they use certain
10 language. There is the reference to the -- taking any
11 action against State or brokers and that type of
12 reporting, but in addition to that, it also states that
13 the company, in brackets, has, slash, has not received any
14 customer complaints in the past year concerning the
15 unauthorized release of CPNI and, parentheses, number of
16 customer complaints company has received relating to an
17 unauthorized access to CPNI or unauthorized disclosure of
18 CPNI, comma, broken down by category complaint.

19 For example, instances of improper access by
20 employees, instances of improper disclosure to individuals
21 not authorized to receive information or instances of
22 improper access to online information by individuals not
23 authorized to view the information, period.

24 If affirmative, provide a summary of all
25 customer complaints received in the past year concerning

1 the unauthorized release of CPNI.

2 So that's the alternative to the law
3 enforcement provision of investigation for law
4 enforcement, but it does have a consumer complaint and a
5 notification provision for reporting in general.

6 So I think that is the other half of what
7 the FCC was doing, even though a major part of their
8 discussion was pretexting.

9 COMMISSIONER JARRETT: Right. It seems to
10 me that the things we want to protect against are not only
11 criminal but, you know, for example, you know, in domestic
12 violence situations, where, you know, a husband is trying
13 to find a wife who has gotten away and is able to get --
14 you know, get the information from the phone company.

15 Or, you know, I'm a lawyer and my client is
16 going through a divorce, and I just call up the telephone
17 company and ask for the spouse's, you know, telephone
18 records, because I'm trying to find out if she's texting a
19 boyfriend and they release it without a subpoena.

20 I mean, those are the kind of things that we
21 need to make sure that the companies have processes in
22 place so that they're not releasing that information, you
23 know, and, again, a good monitoring mechanism to make sure
24 that they have the processes that they're following.

25 Any other comments?

1 I don't have any other questions, but if
2 anybody has any comments on that.

3 MR. BUB: Your Honor, just to add one thing.

4 Looking through the FCC's Order where
5 they're discussing their annual certification requirement,
6 it appears just from reading the FCC's discussion that
7 that's the tool that they, the FCC, will use to monitor
8 CPNI.

9 I'll just read one sentence. It's on
10 page 28. It says, with this filing -- referencing annual
11 certification -- the Commission will be better able to
12 monitor the industry's response to CPNI privacy issues
13 and to take any necessary steps to ensure that carriers
14 are managing customer CPNI securely.

15 So, you know, that's the FCC's tool to make
16 sure that CPNI is handled appropriately.

17 And I indicated that I thought that our
18 certification was a highly confidential filing. I'm not
19 certain of that. If it is, then we would file it as
20 highly confidential. We'd file it publicly with the FCC;
21 then we would do that here as well if required.

22 COMMISSIONER JARRETT: And, Ms. Brueggemann,
23 would you -- I don't know -- that document you were
24 reading from from the FCC, if you have that, would you
25 mind marking that and having that admitted into the

1 record.

2 MS. BRUEGGEMANN: The only problem with it,
3 mine has a lot of notes. I can get a cleaner version, if
4 we could bring one down.

5 COMMISSIONER JARRETT: Perfect. That's
6 fine.

7 JUDGE DALE: Mr. Idoux.

8 MR. IDOUX: Thank you. Just one comment.

9 Just a quick comment on the annual
10 compliance certification with the FCC.

11 If that is something that the Commission
12 would like to pursue, I'd recommend that it be part of the
13 annual report process. And it might not require that in a
14 rulemaking. But if we're already filing it with the FCC
15 and if it's not highly confidential, then we would simply
16 add a copy of that annual report that is due every
17 April 15th without a formal rulemaking process. Something
18 to consider.

19 COMMISSIONER JARRETT: Thank you.

20 JUDGE DALE: Thank you.

21 If you'll all excuse me for just a second.

22 (OFF THE RECORD.)

23 MS. BRUEGGEMANN: Mr. Cecil is coming right
24 back. He went to go grab an exhibit for Commissioner
25 Jarrett to go ahead and get entered into the evidence.

1 COMMISSIONER CLAYTON: Well, I'm not sure.
2 I've got some general questions, and I'll throw these out
3 here.

4 And, John, you can answer if you know.

5 Are you-all aware of past activities
6 regarding releases of private information enforcement at
7 either the Federal level or at the State level relating to
8 telecommunications carriers?

9 Meaning are you aware if the FCC has ever
10 stepped up to penalize somebody for inappropriate action
11 or not, or have we ever penalized somebody for
12 inappropriate action?

13 Start with Staff.

14 Are you going for the mike, Mr. VanEschen?

15 MR. VANESCHEN: I don't believe we've ever
16 pursued that action other than the incident a year or two
17 ago with the National Security Agency.

18 COMMISSIONER CLAYTON: And what did you do
19 with the National Security Agency?

20 MR. VANESCHEN: I did not do anything with
21 that.

22 COMMISSIONER CLAYTON: Are you aware of any
23 Staff enforcement activity relating to privacy
24 information?

25 MR. VANESCHEN: No, I am not.

1 COMMISSIONER CLAYTON: And do you have an
2 explanation for that? Does that mean that we have no
3 privacy problems relating to telecommunications carriers
4 in Missouri or does that mean that you're just not aware
5 of any violations or we're not in a position to know? How
6 do you explain that?

7 MR. VANESCHEN: I guess a combination of
8 factors.

9 I'm not aware of any. I don't think that
10 there's a good method for us right now to find out about
11 these incidents where there are breaches in releasing
12 confidential information.

13 COMMISSIONER CLAYTON: Well, aren't the
14 companies right now supposed to keep records of breaches
15 of private information?

16 MR. VANESCHEN: Yes.

17 COMMISSIONER CLAYTON: Has Staff ever asked
18 for samples or any of those records to assess the level of
19 private information being released?

20 MR. VANESCHEN: We haven't yet.

21 COMMISSIONER CLAYTON: Why is that?

22 MR. VANESCHEN: Some of these recordkeeping
23 requirements that the FCC has established, as they've been
24 discussed earlier here, the FCC just set those
25 recordkeeping requirements up during this past year.

1 COMMISSIONER CLAYTON: Well, but there were
2 recordkeeping requirements in the CPNI statute going back
3 at least two years ago relating to CPNI. I mean, that's
4 what we went after in the NSA stuff.

5 MR. VANESCHEN: Yeah.

6 COMMISSIONER CLAYTON: So, I mean, there's a
7 rule that's in place now, a Missouri rule, that requires
8 keeping those records. Has Staff ever reviewed those
9 records?

10 MR. VANESCHEN: No. I'm unaware that we
11 have reviewed anything on those records.

12 COMMISSIONER CLAYTON: Do you know why Staff
13 has never just done a sampling or an audit or anything
14 like that of those records?

15 MR. VANESCHEN: I don't have a good reason
16 for that. We haven't prioritized that.

17 COMMISSIONER CLAYTON: That begs the
18 question that privacy isn't a priority for Staff. How
19 would you answer that?

20 MR. VANESCHEN: That's not to say that. I
21 mean, this whole issue over protecting a consumer's
22 privacy is something that has become an increasingly
23 important issue in the past couple of years, and it's
24 something that I think by having the CPNI rule go into
25 effect a couple of years ago --

1 COMMISSIONER CLAYTON: It was more than a
2 couple of years ago. The CPNI rule has been here as long
3 as I've been here, I think.

4 MS. BRUEGGEMANN: It went into effect -- it
5 was effective November 30th, 2004, I believe is the date.

6 COMMISSIONER CLAYTON: November 30th, 2004.
7 Thank you. Thank you. So about three and a half years.

8 MR. VANESCHEN: Okay.

9 COMMISSIONER CLAYTON: All right. Are you
10 aware of any FCC actions other than the rulemaking
11 addressing breaches of private information or privacy
12 protection in general?

13 MR. VANESCHEN: I'm not.

14 MS. BRUEGGEMANN: I'm sorry. Could you
15 repeat that question?

16 COMMISSIONER CLAYTON: Are you aware of any
17 FCC actions to either enforce privacy rules or that relate
18 to breaches of CPNI?

19 MS. BRUEGGEMANN: It was either early this
20 morning or late last night that I pulled up the FCC's
21 website and tried to scroll through public documents, and
22 it looked like there were some cases relating back to the
23 CPNI issues. I didn't have a chance to look at every
24 single one of those filings.

25 A couple of them looked like they were

1 negotiated stipulations and agreements, with some sort of
2 contribution -- voluntary contribution by the company to
3 the treasury. So beyond that, I have not reviewed any.

4 COMMISSIONER CLAYTON: Were there any that
5 came from Missouri?

6 MS. BRUEGGEMANN: It didn't appear so, but,
7 again, I did not read through every single one of those
8 filings.

9 COMMISSIONER CLAYTON: Okay.

10 MS. BRUEGGEMANN: I can follow up on that if
11 you want me to.

12 MR. VANESCHEN: If I could just interject.

13 I know that in the FCC's order that started
14 this recent round of rulemaking, there is a footnote --
15 it's on page 8 of the FCC's Order -- and they list a
16 number of different instances where their enforcement
17 bureau has issued notices of apparent liability against
18 various carriers for failing to adequately protect CPNI.

19 COMMISSIONER CLAYTON: Has Staff ever worked
20 with the FCC in enforcing privacy or CPNI rules that occur
21 in Missouri? Have you ever made a referral as an example?

22 MR. VANESCHEN: I'm unaware that we have.

23 COMMISSIONER CLAYTON: Does the FCC
24 communicate with Missouri telecommunications staff of
25 breaches of CPNI information?

1 If you don't call them, do they call you
2 with Missouri-specific information?

3 MR. VANESCHEN: I would say no. We have not
4 received those calls.

5 COMMISSIONER CLAYTON: So basically other
6 than -- other than this rule and the rule that took
7 place -- or took effect in November of 2004, we just don't
8 have any enforcement or connection with privacy rules or
9 regulations at all?

10 You can answer, Ms. Brueggemann. You don't
11 have to communicate with him.

12 MS. BRUEGGEMANN: Well, it's actually a
13 question. I don't know that we've received any consumer
14 complaints either to respond to, and that is part of what
15 this agency does is respond to inquiries and complaints.

16 But I needed to check with Mr. VanEschen to
17 see if that was truly the case.

18 COMMISSIONER CLAYTON: Well, under existing
19 rules do customers have to be notified if there is a
20 breach of certain private information?

21 MR. VANESCHEN: Yes.

22 COMMISSIONER CLAYTON: Are you aware of
23 Missouri customers receiving notification of that breach?

24 MR. VANESCHEN: No.

25 COMMISSIONER CLAYTON: Are you aware of the

1 level of detail that is involved in that communication?

2 MR. VANESCHEN: No.

3 COMMISSIONER CLAYTON: I want to ask
4 Mr. Bub, Mr. Idoux. One of you made reference to law
5 enforcement and discussing the release of private
6 information to law enforcement officials.

7 Which one of you was that, do you recall?

8 (Mr. Bub raises hand.)

9 COMMISSIONER CLAYTON: Can you tell the
10 procedures that are in place right now in terms of
11 releasing CPNI to law enforcement?

12 MR. BUB: In the context of an
13 investigation, Your Honor, I understand that they would
14 give us some type of a subpoena and detail what they need,
15 and we would follow that.

16 COMMISSIONER CLAYTON: Okay. Even at the
17 Federal level, though, they're required to offer a
18 subpoena or produce a subpoena or a court order?

19 MR. BUB: I believe so.

20 COMMISSIONER CLAYTON: Okay. Is there
21 anything about immunity in this rule? Did you-all suggest
22 immunity to be included in this rule?

23 MR. BUB: I had nothing to do with the FCC
24 rule, Your Honor, so I don't know.

25 COMMISSIONER CLAYTON: Okay. There has been

1 recent discussion about FBI seeking CPNI information and
2 not using the proper mechanisms or lawful mechanisms in
3 seeking that private information. Are you aware of that
4 discussion in the press?

5 MR. BUB: No, Your Honor.

6 COMMISSIONER CLAYTON: Does AT&T have a duty
7 to verify the lawfulness of requests that come from law
8 enforcement?

9 MR. BUB: I don't know what the mechanism
10 is, Your Honor.

11 As I think it was Ms. Dietrich that
12 indicated, there was a mechanism set up through the FCC's
13 website itself where we notify law enforcement of the
14 breach. And the specific mechanics, I don't know exactly
15 how that is done.

16 COMMISSIONER CLAYTON: Mr. Idoux, your
17 training course that you took on the web, did it have a
18 law enforcement section?

19 MR. IDOUX: Yes. We have a separate sub
20 department within our company that handles all of those.

21 So any law enforcement requests, we need to
22 quickly turn over to them, and most law enforcement
23 departments know exactly who to contact.

24 COMMISSIONER CLAYTON: To AT&T and Embarq,
25 would you-all agree that if House Bill 1779 passes, that

1 basically this rulemaking, regardless of its shape or
2 form, would not affect either of your customers -- or your
3 companies? Do you agree or disagree with that statement?

4 MR. IDOUX: There is too many amendments
5 floating around out there.

6 COMMISSIONER CLAYTON: In its current form.
7 In its current form.

8 MR. IDOUX: I would agree, although the
9 FCC's rules are going to apply regardless.

10 COMMISSIONER CLAYTON: I understand that.
11 That's not what I asked.

12 I'm talking about this rule in Missouri code
13 would not affect you?

14 MR. IDOUX: I believe that is a true
15 statement.

16 COMMISSIONER CLAYTON: Would you agree or
17 disagree with that statement, Mr. Bub?

18 MR. BUB: To be honest, I haven't been
19 involved in it, but I would imagine it's true.

20 COMMISSIONER CLAYTON: There has been some
21 discussion about the burden of recordkeeping and the
22 burden of disclosure associated with this rule.

23 Can either of you give me an idea of how
24 many breaches or how many releases, inadvertent or
25 intentional, regardless, where you have an inappropriate

1 release of private information, can you give me a ballpark
2 figure of how often or how many customers this affects in
3 the Missouri jurisdiction?

4 MR. IDOUX: I can't give you a number. I
5 know if there would have been any mandated customer
6 notification steps taken in Missouri, as a regulatory
7 affairs manager I would have been notified, but since 2004
8 I've not been made aware of any.

9 COMMISSIONER CLAYTON: So zero?

10 MR. IDOUX: I have not seen what we've
11 summarized in our annual report, our annual FCC compliance
12 report. But there all of the customers' complaints are
13 summarized. But I have not read that.

14 It wouldn't surprise me if it was zero. I
15 would be shocked if it was somewhat above zero.

16 COMMISSIONER CLAYTON: That is to the best
17 of your knowledge?

18 MR. IDOUX: To the best of my ability. I
19 have not been involved in any customer notification
20 process for CPNI breaches.

21 COMMISSIONER CLAYTON: So, really, if the
22 answer is zero, then really this rule wouldn't have much
23 effect on Embarq, would it?

24 You wouldn't have much to report if it's
25 zero.

1 MR. IDOUX: We don't have a whole lot of --
2 I mean, our only concern with the actual reporting of the
3 breach was the timeframe of the seven days, and it would
4 be another step specific on Missouri, but we didn't have
5 overwhelming concerns with that part of the rulemaking.

6 COMMISSIONER CLAYTON: How about AT&T, do
7 you have any idea?

8 MR. BUB: Your Honor, I don't. But we do
9 file that annual certification. If there were any that
10 occurred in Missouri, they'd be itemized there.

11 COMMISSIONER CLAYTON: There is a
12 requirement for filing right now in Missouri, or is that
13 FCC?

14 MR. BUB: FCC, the FCC annual certification.

15 COMMISSIONER CLAYTON: Okay. Is that filing
16 available to Staff? Can you-all go to the FCC and review
17 that? Is that public information?

18 MR. BUB: I don't know whether it's public
19 or not. I know we make the filing.

20 COMMISSIONER CLAYTON: So there is a filing
21 there but we have no idea what's in it and you-all haven't
22 looked, right, Mr. VanEschen?

23 MR. VANESCHEN: That's correct.

24 MS. BRUEGGEMANN: The first filing,
25 Commissioner Clayton, occurred March 1st, 2008. So

1 nobody --

2 COMMISSIONER CLAYTON: So the first filing
3 just occurred, so we don't know.

4 Are you-all going to try to get that, do you
5 think?

6 MR. VANESCHEN: Yes.

7 COMMISSIONER CLAYTON: Good answer.

8 I think Mr. Idoux made a statement about
9 application of this rule on Embarq versus other
10 nonjurisdictional carriers, that it would place you-all at
11 an uncompetitive disadvantage.

12 MR. IDOUX: Correct.

13 COMMISSIONER CLAYTON: Was that you?
14 Correct?

15 Explain that to me. Who would this --
16 assuming no legislation passes, how would this not affect
17 other Missouri carriers and just Embarq? Or tell me how
18 competition would not be fair.

19 MR. IDOUX: Well, it would be -- clearly any
20 wireless carrier operating in Missouri would not have to
21 abide by these rules.

22 COMMISSIONER CLAYTON: Okay.

23 MR. IDOUX: And they clearly are a
24 competitor of Embarq's. Certain VoIP providers would also
25 have not to abide by these type of rules.

1 COMMISSIONER CLAYTON: Like who?

2 MR. IDOUX: The Skypes, the Vonages.

3 And, you know, not all carriers -- you know,
4 VoIP carriers in Missouri are operating under the
5 jurisdiction of the Commission, even in light of the
6 Comcast case.

7 So, I mean, there is other VoIP providers
8 out there, but VoIP and the wireless are two -- are prime
9 examples that we compete with every day.

10 COMMISSIONER CLAYTON: Would you support
11 legislation that would allow for us to equally -- equally
12 assess these rules or implement these rules for those
13 carriers as well?

14 MR. IDOUX: I can't make any comments on
15 that.

16 COMMISSIONER CLAYTON: Okay. I don't think
17 I have any other questions. Thank you.

18 JUDGE DALE: I have received the Report and
19 Order and Further Notice of Proposed Rulemaking in
20 CC Docket No. 96-115, WC Docket No. 04-36, released
21 April 2nd, 2007 by the Federal Communications Commission,
22 and I will make that part of the record in this matter.

23 Are there any other questions for any other
24 witnesses?

25 Is there any other business that I need to

1 attend to before we adjourn?

2 Hearing none, then we are adjourned.

3 Thank you.

4 WHEREUPON, the Hearing was concluded.

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I N D E X

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EXHIBITS INDEX

Exhibit No. 1	
Report and Order and Further Notice of	
Proposed Rulemaking - FCC	*

* To be included with the record.

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CERTIFICATE OF REPORTER

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5

I, Patricia A. Stewart, RMR, RPR, CCR, a

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Certified Court Reporter in the State of Missouri, do

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nor financially or otherwise interested in the outcome of

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Patricia A. Stewart

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CCR No. 401

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