

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

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

STAFF COMMENTS IN SUPPORT OF RULES

COMES NOW the Staff of the Missouri Public Service Commission, pursuant to the Notices of Public Hearing and Notices to Submit Comments published in Volume 33, No. 5 on pages 522-525 of the *Missouri Register* (March 3, 2008), and submits the comments attached to this pleading.

Respectfully Submitted,

/s/ **Shelley Syler Brueggemann**

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 2nd day of April 2008.

/s/ **Shelley Syler Brueggemann**

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**COMMENTS OF THE STAFF OF THE
MISSOURI PUBLIC SERVICE COMMISSION**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), and, pursuant to the Notice to Submit Comments published in the *Missouri Register*, Volume 33, No. 5 on March 3, 2008 submits the following comments:

INTRODUCTION

In the March 3, 2008, edition of the *Missouri Register*, the Missouri Public Service Commission (MoPSC) published a proposed amendment to sections (1), (2), (3), (4), (5), (6) and (7), and created a new section (8) of 4 CSR 240-33.160. The proposed revisions to the Missouri CPNI rules are necessary to more closely align with recent changes made by the Federal Communications Commission (FCC) concerning federal CPNI rules.¹ In general, the proposed rulemaking revises existing Missouri CPNI rules to achieve the following objectives: only allow an opt-in process for disclosing CPNI to a company's joint venture partners or independent contractors; establish special requirements for customer-initiated contacts for CPNI; and establish procedures for CPNI security breaches. The proposed revisions for these objectives are more thoroughly described in the remainder of these comments. In addition, an attempt has been made to address the pre-filed comments of the AT&T companies, XO Communications Services, the Missouri Telecommunications Industry Association, and the Missouri Cable Association.

4 CSR 240-33.160 (1) – Definitions

Due to the proposed additional requirement to notify the MoPSC of CPNI security breaches a definition for "breach" was also added. Several commenters object to the elimination of the word "intentional" in the proposed definition language. Although mistakes such as those discussed in AT&T's comments (bills getting stuck together, a telephone number transposed) can happen, this does not excuse the disclosure of CPNI that is unintentionally released, but nonetheless harmful to customers. Staff is simply

¹ CC Docket No. 96-115 and WC Docket No. 04-36, *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Custer Information IP-Enabled Services*, Report and Order and Further Notice of Proposed Rulemaking, adopted March 13, 2007 and released April 2, 2007.

recommending the MoPSC be notified of such disclosures where CPNI was released without proper authorization.

AT&T, at page 3 of its comments, states that "such a material change to the FCC's rules will require carriers to develop and implement special methods, procedures, system changes and training for their employees to identify, capture and report the inadvertent errors that occasionally occur". As indicated above, Staff is not suggesting the MoPSC be notified of "inadvertent errors", but releases that have the potential to harm customers. Existing rule, 4 CSR 240-33.160(6)(C), already requires all telecommunications companies to maintain a record of all instances where CPNI was disclosed or provided to third parties. Companies should already be maintaining records of much of the information anticipated by the requirement to maintain records on CPNI breaches. As such, the costs associated with the additional requirement to electronically notify (i.e., email notification) the MoPSC of breaches should be minimal.

**4 CSR 240-33.160(3) – Approval Required for Use of CPNI
(Only allow an opt-in process for disclosing CPNI to a company's joint venture partners or independent contractors)**

Existing Missouri CPNI rules allow either an opt-in or opt-out process for approving the release of CPNI to a company's joint venture partners or independent contractors. In contrast the FCC issued a Report and Order and Further Notice of Proposed Rulemaking taking action to only allow an opt-in process as a manner to allow the release of CPNI to a company's joint venture partners or independent contractors. The FCC's recent action means a company can only release the customer's CPNI to a company's joint venture partners or independent contractors if the customer provides affirmative express consent. No longer can a company release CPNI to joint venture partners or independent contractors through an opt-out process whereby a customer fails to object within a certain time period after being notified of the company's intent to release such information.

The rationale for the FCC's action is generally provided in Paragraph Nos. 37 to 50 of the FCC's Report and Order. In particular, the FCC notes in Paragraph No. 39:

39. We find that there is a substantial need to limit the sharing of CPNI with others outside a customer's carrier to protect a customer's privacy. The black market for CPNI has grown exponentially with an increased market value placed on obtaining this data, and there is concrete evidence that the dissemination of this private information does inflict specific and significant harm on individuals, including harassment and the use of the data to assume a customer's identity. The reality of this private information being disseminated is well-documented and has already resulted in irrevocable damage to customers. **While there are safeguards in our current rules for sharing CPNI with joint venture partners and independent contractors, we believe that these safeguards do not adequately protect a customer's CPNI in today's environment.** Specifically, we find that once the CPNI is shared with a joint venture

partner or independent contractor, the carrier no longer has control over it and thus the potential for loss of this data is heightened. We find that a carrier's section 222 duty to protect CPNI extends to situations where a carrier shares CPNI with its joint venture partners and independent contractors. However, because a carrier is no longer in a position to personally protect the CPNI once it is shared – and section 222's duties may not extend to joint venture partners or independent contractors themselves in all cases – **we find that this sharing of data, while still permitted, warrants a requirement of express prior customer authorization.** [Emphasis added]

The FCC clearly states, in Paragraph No. 37, its conclusion to limit access to CPNI by a company's joint venture partners and independent contractors:

37. We modify our rules to require telecommunications carriers to obtain opt-in consent from a customer before disclosing that customer's CPNI to a carrier's joint venture partner or independent contractor for the purpose of marketing communications-related services to that customer. [Footnotes omitted]

Proposed revisions to Missouri Commission rule 4 CSR 240-33.160(3) (A) 1, 2 and 3 reflect this FCC conclusion. Staff supports these proposed amendments and recommends the MoPSC approve these revisions in order to more closely align the Missouri CPNI rules with the FCC's actions to secure CPNI.

The Missouri Telecommunications Industry Association (MTIA), in its written comments, is recommending further revisions to 4 CSR 240.33.160(3) (A) 1 by inserting the phrase “for the purpose of marketing communications related services to that customer”, referencing Section 222 of the Telecommunications Act (Act). The Missouri Cable Association concurs in this recommendation.

While Staff agrees clarification is needed, Staff proposes to use the language of the Act. Staff recommends the language be modified as follows:

(3)(A)1. A telecommunications company shall obtain opt-in approval from a customer before disclosing that customer's CPNI to the telecommunications company joint venture partners or independent contractors. **Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents to initiate, render, bill and collect for telecommunications services.** Any [*such*] disclosure to joint venture partners and independent contractors **for purposes other than those specifically listed above** shall be subject to the safeguards set forth in paragraph (3)(A)3 below.

XO Communications Services, Inc, raises several concerns with 4 CSR 240-33.160(3)(A)1, 2, and 3. Except for a few changes to comport with FCC actions to limit release to joint venture partners and independent contractors, the language is in the existing Missouri CPNI rule. Therefore, XO is already required to comply with these provisions.

4 CSR 240-33.160(4)(C)(8) – Disclosure of CPNI Pursuant to Written Requests

AT&T and XO Communications Services, Inc. question the revisions to this section stating it is confusing and misplaced. This section describes notification that must be provided to customers informing them of when CPNI may be disclosed. Since CPNI will be disclosed upon proper authentication, it is appropriate to include that information in customer notices. However, the Staff agrees the language may lead to confusion and suggests the language be clarified as follows:

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

4 CSR 240-33.160(5) – Requirements Specific to Customer-Initiated Contacts (Establish special requirements for customer-initiated contacts for CPNI)

The proposed revisions to 4 CSR 240-33.160 (5) insert a new section concerning requirements specific to customer-initiated contacts. This section establishes certain requirements depending on the type of customer-initiated contact. For example, if a customer initiates contact for CPNI via telephone access or online access the proposed rules will require a company to only disclose such information over the telephone or online if a customer first provides a password. This section also establishes requirements for passwords including back-up authentication methods for lost or forgotten passwords. The proposed revisions allow a company to disclose CPNI to a customer visiting a company's retail location if the customer presents a valid photo ID matching the customer's account information.

These new requirements for customer-initiated contacts for CPNI are discussed in Paragraph Nos. 13 through 25 of the FCC's Report and Order. The new requirements attempt to minimize the practice of "pretexting" whereby a party pretends to be a particular customer or other authorized person in order to obtain access to that customer's call detail or other private communications records. According to the FCC and the Electronic Privacy Information Center the proposed revisions should help limit the ability of data brokers to obtain private and personal information.

AT&T, beginning at page 5 of its written comments, makes several suggestions to better mirror the FCC's counterpart rule language related to customer-initiated contacts. During the rulemaking process, the Staff was required to make several formatting changes to the FCC rule language to accommodate Missouri Secretary of State rulemaking formatting

requirements. This is one such area. As can be seen by reading the lead-in paragraph with the subsections, the various areas AT&T suggests are in need of clarification are already included as headings to the subsections. For instance, “telephone access to CPNI” is contained as subsection 1 of this section. Staff does not recommend any changes to this section and recommends the Commission approve the published language to more closely align with federal CPNI rules.

4 CSR 240-33.160(8) – CPNI Breaches (Establish procedures for CPNI security breaches)

This section requires a company to notify the MoPSC of a breach of its customers’ CPNI. In addition, this section proposes to require a company to maintain certain records of any breaches. Security breach procedures are discussed in Paragraph Nos. 26-29 of the FCC’s Report and Order whereby the FCC established certain notification requirements of security breaches.

Several commenters recommend the elimination of subsection (A) which requires a company to notify MoPSC personnel of any security breaches. The commenters recommend the elimination of subsection (A) because they claim such a requirement conflicts with the FCC’s CPNI rules. Staff acknowledges the timing issue raised by XO Communications and AT&T whereby the FCC initially requires a company to solely notify the FBI and US Secret Service within seven business days. XO Communications indicates more time should be allowed between notifying such federal authorities and the MoPSC. AT&T recommends the MoPSC be notified when the company notifies its customers. Finally, MTIA’s suggested alternative was to include language treating telecommunications company notifications under this subsection as Highly Confidential “in order to prevent disclosure prohibited by the FCC’s rule.” Staff recommends the MoPSC be notified within fourteen business days by a notification designated Highly Confidential as follows:

(8)(A) A telecommunications company shall notify the Missouri Public Service Commission of a breach of its customers’ CPNI as soon as practicable, and in no event later than [*seven (7)*] **fourteen (14)** business days, after reasonable determination of the breach. The telecommunications company shall electronically notify, **via highly confidential electronic mail**, the Executive Director....

Such notification will simply allow the MoPSC to be kept informed of any security breaches under a highly confidential designation, thereby ensuring the FCC’s rule is followed and the public and customers will only be informed as federal rule dictates.

Suggested Minor Edits by AT&T

AT&T recommends two minor edits. Staff agrees with AT&T and recommends the MoPSC revise the reference of (1)(J) to reflect (1)(K) in proposed 4 CSR 240-33.160(1)(L).

Staff agrees with AT&T and recommends the following change to the proposed language in 4 CSR 240-33.160(5)(C):

Notification shall not reveal the changed information [*to*] **or** be sent to the new account information.”

