

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

VERIZON'S APPLICATION FOR REHEARING

COME NOW MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. d/b/a Verizon Business Services (collectively referred to as "Verizon") pursuant to Section 386.500 RSMo. and 4 CSR 240-2.160 and for their Application for Rehearing state to the Commission:

1. The Commission issued its Final Order of Rulemaking herein on May 22, 2008. Verizon hereby timely files its Application for Rehearing prior to the effective date of such order and new rules.

2. Verizon applies for rehearing regarding Opt-in Requirements for Joint Venture Partners or Independent Contractors under revised rule 4 CSR 240-33.160(3).

3. Requirements that a carrier must obtain customer opt-in consent before sharing CPNI with joint venture partners and independent contractors should be deleted from the rules because such requirements violate the freedom of speech protections of the First Amendment of the United States Constitution and Article 1, Section 8 of the Missouri Constitution.

4. There is no factual basis for these requirements, making them arbitrary and capricious.

5. There is no substantial state interest to support these requirements. These requirements cannot be supported simply by general appeals to "privacy". *US West, Inc. v. FCC*, 182 F3d 1224, 1235 (10th Cir. 1999)("[P]rivacy may only constitute a substantial state interest if the government specifically articulates and properly justifies it.").

6. Even if unauthorized disclosure were a legitimate concern in connection with the sharing of CPNI with joint venture partners and independent contractors, there are less restrictive means (e.g., opt-out procedures) to address those concerns. Restrictions on commercial speech must be "narrowly tailored to advance a legitimate governmental interest." The new opt-in requirements of the Commission's rules fail to meet this standard. Courts have repeatedly explained that opt-in rules constitute a severe impairment on First Amendment rights and have stricken such rules in light of the efficacy of less restrictive opt-out alternatives. *Bd. Of Educ. v Pico*, 457 US 853 (1982); *Meyer v. Grant*, 486 US 414 (1988); *US West, Inc. v. FCC*, 182 F3d 1224 (10th Cir. 1999); *Verizon Northwest Inc. v Showalter*, 282 F Supp 2d 1187 (WD Wash 2003).

7. The Commission's requirements regarding opt-in procedures for CPNI disclosure to joint venture partners and independent contractors conflict with FCC rules, which only apply such procedures to disclosures made for purposes of marketing communications-related services. Verizon acknowledges that in its final order herein the Commission added text permitting disclosure for billing and collection purposes, but that amendment was not sufficient to harmonize the Commission's rules with FCC regulations. Accordingly, to the extent the Commission's rules conflict with FCC requirements, the Commission's rules are preempted and unlawful.

8. Even to the extent the Commission's rules do not conflict with FCC rules, they are unconstitutional and arbitrary as described above. Verizon is actively challenging the FCC's rules in this regard, and a copy of its Opening Brief on its Petition for Review now pending before the United States Court of Appeals for the District of Columbia Circuit is attached hereto and incorporated herein by reference so as to apply the arguments set forth therein towards the Commission's rulemaking, in further support of this application for rehearing.

9. For all the foregoing reasons, the Commission's Order of Rulemaking herein is unconstitutional, unlawful, unjust, unreasonable, arbitrary and capricious, with respect to Opt-in Requirements for Joint Venture Partners or Independent Contractors under 4 CSR 240-33.160(3). Verizon has provided sufficient reason for the Commission to grant and hold rehearing on 4 CSR 240-33.160(3) pursuant to Section 386.500 RSMo. and 4 CSR 240-2.160. The Final Order of Rulemaking should be changed regarding Opt-in Requirements for Joint Venture Partners or Independent Contractors under 4 CSR 240-33.160(3). The Commission should grant Verizon the relief it has requested herein and issue an order revising its rules to allow carriers to share CPNI with joint venture partners and independent contractors without employing opt-in procedures.

WHEREFORE, Verizon respectfully requests the Commission to grant and hold rehearing regarding 4 CSR 240-33.160(3).

Respectfully submitted,

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/Carl J. Lumley

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was emailed to the parties listed below on this 6th day of June, 2008.

/s/ Carl J. Lumley

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