

**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.)

AT&T COMPANIES' COMMENTS

The AT&T Companies¹ respectfully submit the following Comments to the Missouri Public Service Commission ("Commission") concerning proposed changes to 4 CSR 240-33.160, the Commission's Customer Proprietary Network Information ("CPNI") Rule.

1. Introduction

The Federal Communications Commission ("FCC") maintains and vigorously enforces a detailed and comprehensive set of rules governing the use and protection of CPNI. While the AT&T Companies believe the federal rules provide sufficient protection and that separate state CPNI rules are unnecessary, the FCC does allow states to create rules for protecting CPNI, as long as they do not conflict with federal requirements.² Consistency here is essential. Not only does it promote national uniformity and enforcement of law, but also aids telecommunications carriers in the development of standard procedures and systems to ensure compliance throughout their enterprises.

Commission Staff's filings in this rulemaking proceeding reflect an appreciation of the need for such consistency and an intent to revise the Missouri CPNI rule "consistent with recent

¹ Southwestern Bell Telephone Company, d/b/a AT&T Missouri; AT&T Communications of the Southwest, Inc.; TCG Kansas City, Inc.; and TCG St. Louis will be referred to in this pleading as the "AT&T Companies."

² In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115 and WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-22, released April 2, 2007 at para. 60 ("Report and Order") ("... we agree with commenters that assert we should allow states to also create rules for protecting CPNI. . . . To the extent those laws do not create a conflict with federal requirements, carriers are able to comply with federal and state law. Should a carrier find that it is unable to comply simultaneously with the commission's rules and with the laws of another jurisdiction, the carrier should bring the matter to our attention in an appropriate petition.")

federal modifications.”³ For the most part, the proposed rule revisions successfully capture the FCC’s changes to the federal CPNI rule. The AT&T Companies’ Comments below focus on four areas where greater consistency with the FCC’s rules is needed. In addition, the AT&T Companies note two sections that appear to contain minor typographical errors.

2. Substantive Concerns and Comments

a. 4 CSR 240-33.160(1)(C) - Definition of Breach

The FCC’s CPNI Rule as revised now provides a specific definition for a CPNI security breach. 47 CFR §64.2011(e) states: “As used in this section, a ‘breach’ has occurred when a person, without authorization or exceeding authorization, has intentionally gained access to, used or disclosed CPNI.” (emphasis added).

The proposed revision to the Missouri CPNI rule similarly seeks to define the word “breach,” but omits the word “intentionally” from the new definition. The proposed Missouri rule, 4 CSR 240-33.160(1)(C), states: “Breach has occurred when a person, without authorization or exceeding authorization, has gained access to, used, or disclosed CPNI.”

Deleting the word “intentionally” from the statutory definition materially changes what the FCC intended to accomplish with its recent rule revision by significantly expanding the scope of what constitutes a “breach.” This seemingly minor definitional change will increase what must be reported to the Commission, needlessly burdening both the Commission and telecommunications carriers in Missouri.

The FCC’s CPNI rule revisions and its Report and Order adopting them make clear its desire to limit security “breaches” to the intentional conduct it sought to address via the rule. The Report and Order explains that the revisions are intended to respond to the practice of “pretexting,” which is “the practice of pretending to be a particular customer or other authorized

³ Motion for Final Order of Rulemaking filed September 25, 2007 in Case No. TX-2008-0090, at p. 1.

person in order to obtain access to that customer's call detail or other private communications records.”⁴ Inclusion of the word “intentionally” in the definition shows the FCC's intent to focus on and control the conduct of data brokers and other pretexters that seek to obtain unauthorized access to CPNI.

The FCC's inclusion of the word “intentionally” also makes clear that unintentional disclosures of CPNI are not to be considered security breaches for the purposes of the rule. For example, a situation in which two customer billing statements stick together and are erroneously stuffed into one envelope (resulting in one customer inadvertently receiving another customer's bill) is not considered a CPNI security breach under the FCC's rules and need not be reported. But under the Commission's proposed rules, such mailing errors could be construed to be security breaches and trigger state notification requirements. Similarly, a service representative could by mistake pull up the wrong customer's account (e.g., because of similar telephone numbers) and disclose some account information before realizing the mistake (like the account balance or vertical features on the account, e.g., calling waiting). Under the FCC's CPNI rules, this service representative's mistake is not a security breach and is not reportable. But under the proposed Missouri rule, this type of inadvertent mistake could be construed to constitute such a breach and trigger the state notification requirements.

To the AT&T Companies' knowledge, no other state commission has expanded the FCC's definition of security breach in this manner. Such a material change to the FCC's rule 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. These operational changes will be time-consuming and cause the AT&T Companies alone to incur significant costs. In addition, this proposed revision will increase the

⁴ Report and Order, para. 1, and fn. 1.

burden on the Commission and Staff to manage the added reports that will need to be filed by all carriers. The proposed Missouri rule gives no reason for expanding the definition of “breach” or why it might be necessary to collect data on unintentional CPNI disclosures -- especially in light of the FCC’s determination not to do so. The AT&T Companies therefore respectfully request the Commission to add the word “intentionally” back into the Missouri definition of “breach” so that it appropriately mirrors the FCC definition.

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

The proposed rule revision for 4 CSR 240-33.160(4)(C)(8) adds a reference to the new authentication procedures (that are added through 4 CSR 240-33.160(5) of the proposed rule revisions):

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

The AT&T Companies believe this added language is misplaced. The authentication procedures set out in subsection (5) of the proposed rule revisions are unrelated to written requests from customers to disclose CPNI. The FCC did not define authentication procedures for written requests for CPNI and neither does the proposed Missouri rule. The reference in 4 CSR 240-33.160(4)(C)(8) to authentication procedures that do not exist for written requests introduces potential confusion to the rule. The AT&T Companies respectfully suggest that this added language not be adopted so that the language of subsection (4)(C)(8) continues to mirror the FCC’s rule.

c. 4 CSR 240-33.160(5)(A) - Introductory Language to Paragraph Concerning Specific Requirements and Safeguards.

This paragraph of the proposed rule revisions appears intended to mirror the FCC's rule, 47 CFR §64.2010(a), Safeguarding CPNI, which introduces the specific authentication requirements for disclosing CPNI based on customer-initiated telephone contacts, online account access, and in-store visits. But the proposed Missouri paragraph only references customer-initiated contacts: "Telecommunications companies shall properly authenticate the customer prior to disclosing CPNI based on customer-initiated contacts." The omission of the specific methods of obtaining CPNI covered by this rule (customer-initiated telephone contacts, online account access and in-store visits) could lead to interpretation disagreements and confusion in enforcement.

The AT&T Companies respectfully suggest that the language in this section of the proposed rule be revised to better mirror the FCC's counterpart: "telecommunications carriers must properly authenticate a customer prior to disclosing CPNI based on customer-initiated telephone contact, online account access, or an in-store visit." Similarly, in order to clarify the type of contact covered by the rules, the AT&T Companies suggest that 4 CSR 240-33.160(5)(A)(1)(A) should be modified to state: "Telecommunications companies shall only disclose call detail information over the telephone based on a customer-initiated telephone contact if the customer first provides the company with a password as described in (5)(B) below." In the same vein, the AT&T Companies suggest that 4 CSR 240-33.150(5)(A)(1)(A)(III) should be modified to state: "If the customer is able to provide call detail information to the company during a customer-initiated telephone contact without the company's assistance then the company is permitted to discuss the call detail provided by the customer."

d. 4 CSR 240-33.160(8) - CPNI Security Breaches.

Subsection A of this portion of the proposed Missouri rule requires carriers to notify the Commission of a breach of a customer's CPNI as soon as practicable, in no event later than seven business days, after reasonable determination of the breach, with electronic notification to the Commission's executive director, director of operations, general counsel and the manager of the telecommunications department.

This proposed notification requirement appears to directly conflict with the new FCC rule that requires carriers to notify certain federal law enforcement agencies of such breaches and specifically prohibits carriers from publicly disclosing such breaches until seven full business days have passed after law enforcement notification (unless extended by the agency). The FCC's purpose in requiring carriers to delay disclosure of the breach is to avoid impeding or compromising a federal criminal investigation or national security.

The proposed Missouri rules gives no reason for the state notification requirement. Under the FCC's rules, the FCC itself is not to receive notice of such breaches. Rather, notice is specifically required to be provided to the United States Secret Service and the Federal Bureau of Investigation through a central reporting facility. The AT&T Companies respectfully suggest that there similarly is no need for the duplicate state notification requirement and that this proposed addition to the rule be deleted.

But if such notification is to be required by the Commission, the requirement must not conflict with federal rules. If this portion of the proposed rule is not deleted, the AT&T Companies suggest revising 4 CSR 240-33.160(8)(A) to require notification of CPNI security breaches concurrent with carrier notification to customers:

A telecommunications company shall notify the Missouri Public Service Commission of a breach of its customers' CPNI concurrent with the company's notification to its customers of the breach pursuant to 4 CFR §64.2011(c).

3. Suggested Minor Edits

- a. 4 CSR 240-33.160(1)(L) - Definition of Information Services Typically Provided by Telecommunications Companies.

This definition, which is currently in the Commission's CPNI rule, contains an internal reference to the prior subsection (1)(J) of the rule. With the renumbering of these subsections, this internal reference should have been changed to subsection (1)(K).

- b. 4 CSR 240-33.160(5)(C) - Notification of Account Changes.

Subsection 1.C of this portion of the rule appears to contain a minor typographical error. The word "to" should be changed to the word "or," so that the sentence reads: "Notification shall not reveal the changed information or be sent to the new account information."

Respectfully submitted,

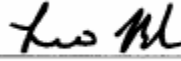


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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on April 1, 2008.



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