



Missouri

August 10, 2018

To Whom It May Concern:

On behalf of the American Civil Liberties Union of Missouri and our approximately 19,000 members throughout the state, I would like to submit public comments regarding the draft rules outlined in 4 CSR 240-10.¹ The rules, as written, present significant concerns for the privacy of Missourians and should be rewritten to respect the constitutional rights of all Missourians.

The data sharing proposed in these rules between utility companies and their affiliates or third parties includes information ranging from social security numbers to medical information that may be shared **without a consumer's consent**. This creates a system that is rife for abuse both from within the government and for those who may wish to acquire the information shared between these entities. The rules should be narrowly tailored to ensure data security in transfer, storage, and disposal as well as contain rigid protections to avoid infringements on the Fourth Amendment rights of Missourians.

As Missourians innovate, the information gathered by utility companies may include when individuals are in their home, what appliances they are using, and even when they go to sleep. The proposed rules do not respect the intentions of the Founding Fathers who recognized that everyone in a democracy should have a right to privacy for their "persons, houses, papers, and effects." Today's Missourians deserve no less protection just because their "papers and effects" might be stored electronically. In 2014, Missourians made this point clear, adding to our Bill of Rights that Fourth Amendment protections extend to "electronic communications and data."

Information gathered by utility companies and, under these rules, liberally shared with their affiliates, is valuable to external actors. The potential for hacking and the exploitation of data as that data becomes more vulnerable is highly increased under the arrangement these rules detail—all without the explicit consent of the consumer when information is shared. Though the rules acknowledge the need for procedures in the event of an unauthorized transfer, they fail to qualify what an "immaterial" amount of information is or specify that the consumer must be notified in the event of a breach.

Moreover, the proposed rules conclude with the assertion that provisions of these rules may be waived for "good cause" without delineation of what would constitute a "good cause." As surveillance technologies have evolved, so too has the use of those technologies by law enforcement. However, under the Fourth Amendment, police must get a warrant before searching items or places in which people have a reasonable expectation of privacy. There is nowhere more obvious that the protection of privacy applies than in one's own home yet the proposed rules potentially open the home to intrusive scrutiny.

¹ The comments submitted apply to draft rules for 4 CSR 240-20.015, 4 CSR 240-40.015, 4 CSR 240-80.015 and 4 CSR 240-40.016.

We urge the Commission to reassess the rules as drafted and narrowly tailor the final rule to include explicit consumer consent as well as safeguards to protect the Fourth Amendment rights of Missourians. We are available to answer any questions regarding these comments or our analysis of the proposed rules.

Please feel free to contact me via email at sbaker@aclu-mo.org or by phone at (816) 470-9933.

Sincerely,

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