

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

In the Matter of the Request of Southwestern	)	
Bell Telephone, L.P., d/b/a AT&T Missouri, for	)	Case No. TE-2006-0053
A Waiver of Certain Requirements of 4 CSR	)	
29.040(4).	)	

**DISSENTING OPINION OF COMMISSIONERS ROBERT M. CLAYTON III AND  
STEVE GAW**

These Commissioners respectfully dissent from the majority Order clarifying Rule 4 CSR 240-29.040(4). These Commissioners believe that the "Enhanced Record Exchange Rule ("the rule") requires the inclusion of calling party number ("CPN") as part of the Category 11-01-XX record that it provides for wireless-originated calls transiting the LEC-to-LEC network and terminating to other LECs. The purpose of this rule is to provide accurate billing records that may be used by the terminating carrier to bill the originating carrier for the call and audit the use of their networks. To explain how requiring the CPN would be helpful to achieving the intent of this rule, staff witness Voight said in direct testimony:

*"In many instances (but not all instances), knowing the CPN will assist the terminating carrier in verifying the proper jurisdiction of wireless-originated telephone calls. Billing records that contain CPN of wireless-originated telephone calls can aid terminating carriers in establishing practices which reveal network usage. In my opinion, the lack of CPN within the billing record restricts, perhaps severely, the ability of terminating carriers to institute general network auditing guidelines."*

The majority claims that the original intent of the Commissioners is not important and is not to be considered because the rule is unambiguously written and therefore must be interpreted as written without looking back to the Commission's intent. These Commissioners conclude

differently but agree that the rule is not ambiguous. The Commission previously found in its Order of Rulemaking that the rule contemplated whether the CPN should be included in the Category 11-01-XX record.

Nothing in the LEC-to-LEC network rules permit the exclusion of CPN in billing records for wireless originated calls. In fact, just the opposite is true because CPN for wireless originated calls is included in billing records for IXC traffic and, with but one exception having nothing to do with CPN<sup>1</sup>, the billing records for LEC-to-LEC traffic is “identical” to that for IXC traffic. Section 4 CSR 240-29.020 (5) defines both a category 11-01-XX billing record and a Missouri-specific category 11-01-XX billing record. These definitions further acknowledge that Missouri-specific category 11-01-XX billing records are used for feature group C (FGC) traffic—the type of traffic occurring over the LEC-to-LEC network. This rule specifically acknowledges that a Missouri-specific category 11-01-XX billing record “is identical to a category 11-01-XX record except that it contains an originating operating company number (OCN)...instead of a Carrier Identification Code...” This definition makes it clear that the only difference between category 11-01-XX billing records used in the IXC network, and Missouri specific category 11-01-XX billing records used in the LEC-to-LEC network is with the OCN and CIC codes, and not the CPN. Because CPN is included in category 11-01-XX billing records for IXC traffic, by definition it must be included in the Missouri-specific billing records used for LEC-to-LEC traffic. Thus, the argument that “nothing in the text of the rule specifically requires CPN to be included in the billing records for wireless-originated calls” must fail.

Missouri Independent Telephone Group (“MITG”) filed comments requesting the CPN clarification in the original Rulemaking. The Commission’s response within the Order of

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<sup>1</sup> 4 CSR 240-29.020 (5). The exception is an OCN in positions 167 through 170 instead of a CIC in positions 46 through 49.

Rulemaking unequivocally answered that request. In one of the comments, the MITG asserts that SBC's Category 11-01-XX billing system does not properly include the calling party number for wireless calls. In response to this, the Commission says,

*"We thus determine that transiting carriers shall include the CPN as part of the Category 11-01-XX records created for wireless-originated traffic occurring over the LEC-to-LEC network."*<sup>2</sup>

Without conceding the point regarding ambiguity, these Commissioners opine that if the rule were ambiguous one may look to the Order of Rulemaking to clarify its intent and meaning. The record in this case suggests that administrative rulemaking requires such a record be created for due process of the parties during and after the process. If the Commission turns a blind eye to the established record, its existence is meaningless. Like its Staff before the Circuit Court of Cole County<sup>3</sup>, this Commission has reversed its position and its intent, ignoring more than two years worth of work.

These Commissioners do not address the merits of AT&T's claims supporting a waiver request of the rule because this is not the appropriate time in the process to deal with issues such as the alleged high costs that AT&T would have to incur. The Commission should address any encountered problems through an application for a waiver, not by "clarifying the rule" and shifting its position based on different evidence. Since staff's change of opinion occurred after the final Order of Rulemaking, a waiver proceeding is the most appropriate method of resolving the parties' dispute.

*"If any carrier determines that it cannot or should not include the originating CPN of wireless callers in the Category 11-01-XX billing record, it is free to petition the Commission to be excluded from that aspect of the rule."*<sup>4</sup>

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<sup>2</sup> Order of Rulemaking published in the Missouri Register, Vol. 30, No. 12, (June 15, 2005), p. 1389

<sup>3</sup> State of Missouri, ex rel. Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, Relator v. The Missouri Public Service Commission, Respondent. Cole County Circuit Court Case No. 05AC-CC00732

<sup>4</sup> Order of Rulemaking published in the Missouri Register, Vol. 30, No. 12, (June 15, 2005), p. 1389

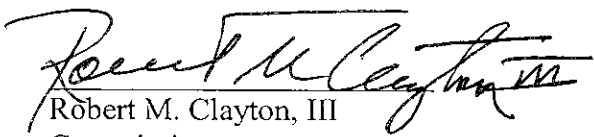
There is no provision in Missouri statutes that allows the rule to be changed because of an alleged mistake; the only recourse is to amend the rule or for the Commission to waive its application. The Commission should proceed with a petition waiver as it instructed in the order of Rulemaking.

For the foregoing reasons, these Commissioners respectfully dissent.

Respectfully Submitted



Steve Gaw  
Commissioner



Robert M. Clayton, III  
Commissioner

Dated at Jefferson City, Missouri,  
on this 19<sup>th</sup> day of June, 2006.