

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 23rd day
of May, 2006.

In the Matter of the Request of Southwestern Bell)
Telephone, L.P., d/b/a AT&T Missouri, for a Waiver)
of Certain Requirements of 4 CSR 240-29.040(4))

Case No. TE-2006-0053

ORDER CLARIFYING RULE

Issue Date: May 23, 2006

Effective Date: June 2, 2006

SUMMARY: This Order clarifies that 4 CSR 240-29.040(4) does not require the inclusion of calling party number ("CPN") for wireless calls in the Category 11 billing records exchanged by telecommunications companies for traffic that traverses the LEC-to-LEC network.

BACKGROUND

After several years of investigation, discussion and meetings with representatives of telecommunications carriers, the Commission adopted a series of rules under new Chapter 29, Enhanced Record Exchange Rules. Over time, the records exchanged between carriers had become less useful for the identification and subsequent billing of originating carriers. A significant amount of traffic was delivered to terminating carriers in which the terminating carrier had no means of identifying the originating carrier, rendering it unable to bill for the termination service.

The Enhanced Records Exchange Rules, made effective on July 30, 2005, instituted several requirements designed to reduce or eliminate unidentified traffic. Separate trunking

options, delivery of the CPN in the Signaling System 7 data stream and additional information in the Category 11 records were among the requirements. The Rules have successfully reduced the unidentified traffic delivered to terminating carriers.

Upon implementation of the Rules, a dispute arose concerning whether 4 CSR 240-29.040(4) requires the inclusion of CPN for wireless calls in the Category 11 records. The terminating carriers assert that they need that information to ascertain the jurisdictional nature of the call so as to bill appropriately. Transiting carriers, particularly AT&T Missouri, assert that the rule does not require the inclusion of CPN for wireless calls and AT&T, in the alternative, seeks a waiver if 4 CSR 240-29.040(4) does require the inclusion of CPN for wireless calls.

Procedurally, this matter comes to the Commission pursuant to an Application for Rehearing and Alternative Request for Temporary Variance or Waiver filed by AT&T on July 14, 2005, prior to the July 30, 2005 effective date of the rule. Although the Commission denied rehearing, it granted a Temporary Waiver that has continued to the present and established this proceeding.

DISCUSSION

This case turns on an almost pure question of law. 4 CSR 240-29.040(4) provides as follows:

(4) When transiting traffic for any carrier other than an incumbent local exchange carrier, originating tandem carriers shall, for each compensable call, create and make the following available upon request by a terminating carrier, at no charge to the terminating carrier:

(A) A category 11-01-XX record or, if no Carrier Identification Code is available, a Missouri-specific category 11-01-XX record.

(B) Nothing in (4)(A) above shall preclude two (2) carriers from mutually agreeing to exchange other types of billing records.

(C) A list of originating carriers connected to their tandem switch who originate traffic on the LEC-to-LEC network. The originating tandem carrier

will ensure this list of originating carriers is readily accessible to any carrier involved in the completion of such calls. The originating tandem carrier will maintain the following information for carriers using its tandem switch to originate traffic on the LEC-to-LEC network: the name of the originating carrier plus the name, mailing address, telephone number and electronic address of an individual responsible for contacts regarding LEC-to-LEC network traffic billing and payment inquiries.

A “Missouri-specific” Category 11 record is defined in 4 CSR 240-29.020(5) as:

a mechanized individual call detail record for feature group C (FGC) traffic developed by the incumbent local exchange carriers in Missouri for intercompany settlements pursuant to the Missouri Public Service Commission (MoPSC) Report and Order in Case No. TO-99-254. This record contains data transferred from a 92-01-XX mechanized call detail record. The first two (2) digits in this record are “11.” This type of call record is identical to a category 11-01-XX record except that it contains an originating operating company number (OCN) in positions 167 through 170 instead of a CIC in positions 46 through 49.

There is no mention in either of these sections of CPN or the delivery of CPN as part of the Category 11 record. In part, this is due to the Commission’s interpretation of industry-standard Category 11 records as already including the CPN in a certain field of the record form. This interpretation was not entirely accurate. For wireless calls, it is not standard industry practice to include the CPN in that field.¹

It is clear that the Commission intended to require the inclusion of CPN for wireless calls. In its Final Order of Rulemaking, the Commission stated:

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. 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 our rule. Based on the comments and the record before us, we see no reason to exclude wireless CPN from the billing records generated by transiting carriers. We order implementation of this section without change.

¹ AT&T Witness Read Direct at 13-16 and AT&T Witness Constable Direct at 8-10.

However, the Commission's statement depended on its mistaken assumption that industry-standard Category 11 records contained CPN for wireless calls. Therefore, the Commission's intent was not carried through to the rule itself.

Although the Commission's intent in proposing the rule is clear, we are bound by the rules of statutory construction to look first at the language of the rule itself. If it is clear and unambiguous on its face, then we may not look further in construing the rule. On its face, the rule is not unclear about whether CPN for wireless calls should be included in the Category 11 records. The rule makes no mention of CPN, and no reasonable person reading the rule in isolation would be confused about the inclusion of CPN. The confusion is created by inconsistencies between the wording of the rule and statements of intent from the Commission and not from any inconsistency within the rule itself. Therefore, the rule speaks for itself, and does not require the inclusion of CPN for wireless traffic in the Category 11 records.

FINDINGS OF FACT

1. For wireless calls, it is not standard industry practice to include the CPN in the Category 11 records.
2. Neither 4 CSR 240-29.040(4) nor 4 CSR 240-29.020(5) makes any mention of CPN.

CONCLUSIONS OF LAW

1. Section 386.250(6) RSMo 2000, concerning the jurisdiction of the Commission, provides that the Commission has the authority to promulgate rules. It further provides that such rule promulgation shall comply with Chapter 536 RSMo. Section 4 CSR 240.29.040(4) was properly promulgated and became effective on July 30, 2005.

2. The same principles of construction are used in interpreting agency rules as are used in interpreting statutes.²

3. The intent of the agency promulgating a rule is ascertained by considering the plain and ordinary meaning of the words used in the rule.³

4. Where language is clear and unambiguous, there is no room for construction.⁴
Section 4 CSR 240-29.040(4) is clear and unambiguous.

5. Section 4 CSR 240-29.040(4) does not contain any language that could require the inclusion of CPN for wireless calls in Category 11 records.

6. Section 4 CSR 240-29.040(4) does not require the inclusion of CPN for wireless calls in Category 11 records.

IT IS ORDERED THAT:

1. Section 4 CSR 240-29.040(4) is clarified in that it does not require the inclusion of calling party number (CPN) for wireless calls in the Category 11 billing records.

² *Teague v Missouri Gaming Commission*, 127 S.W. 3d 516,517 (Mo. App. W.D. 2003).

³ *Union Electric Co. v Director of Revenue*, 799 S.W.2d 78, 79 (Mo. Banc 1990).

⁴ *Community Federal Savings and Loan Ass'n v Director of Revenue*, 752 S.W. 2d, 794 (Mo. Banc 1988).

2. This order shall become effective on June 2, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', with a stylized, cursive script.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm. and Appling, C., concur.
Murray, C., concurs with opinion attached.
Gaw and Clayton, CC., dissent with opinion to follow.

Dale, Chief Regulatory Law Judge