

**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 a Waiver of Certain)
Requirements of 4 CSR 240-29.040(4).)

Case No. TE-2006-0053

**JOINT BRIEF OF THE SMALL TELEPHONE COMPANY GROUP
AND THE MISSOURI INDEPENDENT TELEPHONE GROUP**

Introduction

The Enhanced Record Exchange (“ERE”) Rule was promulgated by the Missouri Public Service Commission (“Commission”) in Case No. TX-2003-0301. The rule was an attempt by the Commission to resolve problems that were caused by the failure of the small local exchange companies to receive accurate and complete billing records of the calls terminated on their networks. The title of the rule promulgated by the Commission is the *Enhanced Record Exchange* Rule. The purpose of the rule was to enhance the billing records exchanged by the companies in order to minimize intercarrier compensation disputes that had remained unresolved since the elimination of the Primary Toll Carrier (“PTC”) Plan in 1999, and to provide adequate billing records that could be used by the terminating carrier to bill the originating carrier for the call and audit the use of their networks. The Small Telephone Company Group (“STCG”) and the Missouri Independent Telephone Group (“MITG”) fully participated in the cases and industry meetings that led up to the publication of the ERE Rule.

For a number of years, the small local exchange telecommunications companies sought relief from the Commission for the problem of unidentified, or “phantom,” traffic that transiting carriers, primarily AT&T Missouri, terminated on their networks. Relief was sought because the

billing records for some terminating traffic, primarily wireless traffic, were incomplete and insufficient to allow the small incumbent local exchange companies (“ILECs”) to audit the use of their networks. In order for a terminating carrier to bill for a call that has been placed on its network, the terminating company needs to know the time the call is placed, the duration of the call, the jurisdiction of the call, and the party to whom it should be billed. On June 10, 1999, in Case No. TO-99-254, the Commission ordered that industry standard Category 11-01-XX call records be provided to any local exchange company that requested them for any calls terminated to it.¹ “Industry standard” Category 11-01-XX records are the records exchanged between telecommunications providers to provide information for billing of exchange access.² These records include Calling Party Number (“CPN”) in the “From Number” field which allows the terminating carrier to properly identify the jurisdiction of the call. As stated by Staff witness Voight in his 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 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.³

On June 15, 2005, the Commission published its Order of Rulemaking in which it adopted the ERE rule, 4 CSR 240-29.010-29.160. This rule was published in the Code of State Regulations on June 30, 2005, and became effective on July 30, 2005. On July 14, 2005, AT&T

¹*In the Matter of an Investigation Concerning the Primary Toll Carrier Plan and IntraLATA Dialing Parity*, 8 Mo. P.S.C. 3d 176, 185 (June 10, 1999).

²Schoonmaker Direct Testimony, page 8-9.

³Voight Direct Testimony, page 6, lines 10-16.

Missouri filed an Application for Rehearing of the Order of Rulemaking and an Alternative Request for Temporary Variance or Waiver of the requirement in 4 CSR 240-29.040(4) that the originating CPN be included in the category 11-01-XX billing records for wireless originated calls. The Commission denied the request for rehearing on July 28, 2005, but granted a temporary waiver of the requirement that CPN be included in the billing records for wireless originated calls. The Commission then opened this case to investigate the issue further, and subsequent temporary waivers have been granted to AT&T Missouri. On March 2, 2006, the Commission issued an “Order Establishing Procedural Schedule, Bifurcating Proceeding, Extending Temporary Waiver and Changing Style of Case.” This procedural schedule adopted by the Commission bifurcated the legal issue of whether the Commission’s ERE rule 4 CSR 240-29.040(4) requires that the originating tandem carrier include the CPN as part of the Category 11-01-XX record that it provides for wireless-originated calls that transit the LEC-to-LEC network from the more subjective issue of whether AT&T Missouri should be granted a waiver of that provision. The sole issue to be considered in this first part of the bifurcated case is:

Does Commission Rule 4 CSR 240-29.040(4) require the originating tandem carrier to include the Calling Party Number (“CPN”) as part of the Category 11-01-XX record that it provides for wireless-originated calls that transit the LEC-to-LEC network and terminate to other LECs?

Argument

Commission Rule 4 CSR 240-29.040(4) Requires that the Calling Party Number be Included as Part of the Category 11-01-XX Record that the Originating Tandem Carrier provides for wireless-originated calls transiting the LEC-to-LEC network and terminating to other LECs.

Commission Rule 4 CSR 240-29.040 is entitled, "Identification of Originating Carrier for Traffic Transmitted over the LEC-to-LEC Network." Subsection (4) of 4 CSR 240-29.040 states:

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.

Subsection (6) of 4 CSR 240-29.040 states:

The originating telephone number shall be the telephone number of the end user responsible for originating the telephone call. Under no circumstances in sections (1), (2), (3), (4) and (5) above shall any carrier substitute an originating telephone number other than the telephone number of the end user responsible for originating the telephone call.

Subsection (6) is not limited to the provision of "Caller ID" with each call, but is a broad prohibition that applies to all sections of 4 CSR 240-29.040 including subsection (4) requiring the provision of Category 11-01-XX billing records. When these sections of the rule are read together, it is clear that the rule requires that CPN not only be passed as the call is completed, but that it be provided in the billing records as well.

In addition to the plain language of the rule set out above, the intent of the Commission was clearly stated in the Order of Rulemaking, "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.”⁴

After considering the evidence presented by AT&T Missouri regarding the removal of CPN from the Automatic Message Accounting (“AMA”) records when creating the Category 11-01-XX billing records for terminating carriers, the Commission stated:

We find that SBC has shown no credible evidence that the Category 11-01-XX billing records it creates for wireless-originated calls traversing the LEC-to-LEC network should be different from the Category 11-01-XX billing records it creates for wireline *and wireless*-originated calls traversing the interexchange carrier network.⁵

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 the rule.⁶

The Commission’s statements in the Order of Rulemaking could not be more clear that the Commission’s intent was for the CPN to be included in the Category 11-02-XX billing records for wireless-originated calls.

In his Direct testimony, Staff witness Voight stated that the Staff agreed that the ERE required CPN in wireless billing records when the Order of Rulemaking was issued, but came to have a different opinion later.⁷ Staff’s change of opinion after the final Order of Rulemaking is not relevant to the intent of the Commission at the time the rule was promulgated, and the Staff’s change of opinion can have no effect on the issue of whether the rule requires that CPN be

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

⁵*Id.* Emphasis in original.

⁶*Id.* Emphasis added.

⁷Voight Direct Testimony, p. 12.

included in the Category 11-01-XX billing records for wireless-originated calls.

In his Direct and Rebuttal testimony filed in this case, Mr. Schoonmaker has shown that CPN is part of the industry-standard Category 11 billing records. Mr. Schoonmaker reviewed the industry group standards for billing records exchanged between industry members. Those standards are contained in a publication of the Ordering and Billing Forum (“OBF”) of the Alliance for Telecommunications Industry Solutions (“ATIS”). Specifically, these record formats are contained in the Electronic Message Interface (“EMI”) document which sets out the structure of various types of records and the individual fields within those records.⁸ Mr. Schoonmaker demonstrated that the industry standard Category 11-01-XX billing record requires that the “From Number” section of the Category 11-01-XX record include the originating caller’s number.⁹ Staff witness Voight states in his Rebuttal Testimony that, “The ‘From Number’ is exactly the same as ‘CPN’ for wireless-originated calls.”¹⁰ The ERE rule clearly requires the transiting carrier to make a Category 11-01-XX record available to the terminating carrier, and Mr. Schoonmaker’s testimony demonstrates that the Category 11-01-XX record should include the CPN. AT&T Missouri witness Constable acknowledges that CPN is available for the majority of calls transiting AT&T Missouri’s network. The AMA recording requirements as evidenced by Constable Schedule 2(P), as shown by Mr. Schoonmaker’s rebuttal testimony, require this information to be recorded in the AMA record. Thus, under the standards document, CPN should be available to AT&T Missouri’s billing system to include in the Category 11-01-

⁸Schoonmaker Direct Testimony, p. 8.

⁹Schoonmaker Direct Testimony, p. 12.

¹⁰Voight Rebuttal Testimony, pp. 3-4.

XX records required by 4 CSR 240-29.040(4).¹¹ It is significant to note that Sprint Missouri, Inc., which requested to be dismissed from this proceeding, stated in its Motion to be Dismissed that it was not requesting a waiver of this rule because it had “made the necessary system modifications to be fully compliant with a request for industry-standard records.”¹²

Finally, it is clear that AT&T Missouri believed that the rule, as promulgated, required the inclusion of CPN in the Category 11-01-XX billing records, because it specifically requested a waiver of the provision. In this first part of the bifurcated proceeding whether or not AT&T Missouri should be granted such a waiver is not being considered. The only issue before the Commission is whether or not the rule as written and as approved by the Commission requires that CPN be included in the Category 11-01-XX billing records for wireless-originated calls terminated to the LECs. The STCG and MITG believe that the only conclusion to be drawn from the plain language of the rule, the Commission’s Order of Rulemaking and the written standards for the Category 11-01-XX records is that the rule requires that CPN be included in the Category 11-01-XX records.

¹¹Schoonmaker Rebuttal Testimony, p. 8.

¹²Sprint notified Kingdom Telephone Company that the records it provided beginning March 31 would include the CPN. See, Schoonmaker Rebuttal Testimony, p. 19.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic submission, hand-delivered or sent by U.S. Mail, postage prepaid, this 13th day of April, 2006 to:

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