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PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

PUBLIC HEARING

June 8, 2004

Jefferson City, Missouri

Volume 1

In the Matter of a Proposed       )  
New Rule 4 CSR 240-33.160       )  
Regarding Customer Proprietary ) Case No. TX-2003-0445  
Network Information               )

KENNARD L. JONES, Presiding,  
REGULATORY LAW JUDGE.

REPORTED BY:

STEPHANIE L. KURTZ MORGAN, RPR, CCR  
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1 P R O C E E D I N G S

2 JUDGE JONES: Okay. Let's go ahead and go on the  
3 record.

4 This is Case No. TX-2003-0445. It is a rulemaking  
5 for a proposed rule -- Rule No. 4 CSR 240-33.160 regarding  
6 customer proprietary network information.

7 This is a public hearing for this rulemaking. And  
8 as some of you may know, we will first take comments that are  
9 in support of the rule, and then we will take comments that  
10 are in opposition to the rule -- or I should say not in  
11 support of the rule.

12 Those of you who would like to make comments, step  
13 forward to the podium here and give your comments. And then  
14 if I have questions, I'll ask questions.

15 If you're wondering where the Commissioners are,  
16 they're in agenda right now. And some of them may be joining  
17 us later on, or they may not be joining us later on.

18 At this time I will ask Staff, I suppose, to step  
19 forward first and -- and make oral comments on the rule.

20 Do you -- will you please state your name first,  
21 please.

22 MS. DIETRICH: Natelle, N-A-T-E-L-L-E, Dietrich,  
23 D-I-E-T-R-I-C-H.

24 JUDGE JONES: Thank you.

25 (MS. NATELLE DIETRICH WAS SWORN.)

1 JUDGE JONES: Thank you. You may go forward.

2 MS. DIETRICH: Section 392.185.9 states that the  
3 provisions of the chapter shall be construed to protect  
4 consumer privacy.

5 To address this mandate the Commission asked Staff  
6 to review the federal Customer Proprietary Network Information  
7 Rules or CPNI rules and other state rules and make  
8 recommendations as to areas that may need clarification in a  
9 Missouri-specific rule.

10 After discussion the Commission directed Staff to  
11 develop a Missouri rule that mirrors the FCC rule with a few  
12 additions. The Commission directed Staff to define terms such  
13 as affiliate agents, independent contractors, et cetera,  
14 because during research these were terms that seemed to cause  
15 confusion, since they were not specifically defined in the  
16 context of the federal CPNI Rules.

17 The Commission also asked Staff to clarify that  
18 non-regulated entities could not use information received from  
19 regulated entities under the rule, and to also include  
20 language to make sure that customer notice of CPNI rights was  
21 easily identified.

22 While the rules were in draft stage, additional  
23 issues were identified as causing concern or confusion on a  
24 national level. The issues such as CPNI and public  
25 answering safety -- public safety answering ploys and CPNI and

1 bankruptcy were also added to the proposed rule to provide  
2 clarification.

3           Staff and several parties filed written comments.  
4 Staff continues to support the rules, but offers additional  
5 comments to address the concerns raised by the various  
6 commenters in this proceeding.

7           Several parties suggested the definitions in the  
8 proposed rule expand the CPNI requirements far beyond the  
9 intent of the federal rule. The purpose of including various  
10 definitions was twofold.

11           First, some definitions were added because of  
12 general PSC rule practice to define terms used in Missouri  
13 rules within those rules, and also to use Missouri-specific  
14 terms such as telecommunication service, as opposed to  
15 non-Missouri terms such as communication service, which is  
16 used in the federal CPNI rules.

17           Second, other terms were defined to address  
18 confusion that was discovered during Staff's review of federal  
19 and other state rules. As previously stated, the intent of  
20 the proposed rule was to mirror the FCC's rules with limited  
21 clarification.

22           After reading the comments, Staff offered the  
23 following discussion on various definitions. For categories  
24 of service, Staff recommends this definition be changed to  
25 reflect and reference the federal definition in

1 47 USC 64.2005A.

2 On CMRS SBC suggests the definition be removed in  
3 its entirety, since it is not used elsewhere in rule.  
4 However, by incorporating the federal definition of categories  
5 of service, CMRS will be used in the rule going forward,  
6 assuming that the Commission takes Staff's recommendation.

7 So Staff could just limit a definition contained  
8 for CN-- CMRS in the rule -- continue to be included, but  
9 suggest the words "a provider of" be moved so the def--  
10 definition would now read, CMRS is commercial mobile radio  
11 service, period.

12 Customer: The purpose of the clause "or any person  
13 or entity with which the telecommunications Company has had a  
14 prior service," as it appears in the definition, was added to  
15 clarify that a company will retain CPNI records of former  
16 customers.

17 Since commenters had concerns about the ability to  
18 market to existing customers, Staff recommends removing the  
19 clause from the definition and adding language to Section  
20 6C such that the requirement to retain records for one year  
21 applies to both existing and former customers.

22 Independent contractor: Staff does not object to  
23 SBC's proposed definition.

24 Joint venture partner: Staff does not object to  
25 SBC's proposed definition.

1               Several parties object to the inclusion of language  
2     discussing the "disclosure of CPNI to PSAP" or public safety  
3     answering points. During the drafting of the proposed rule  
4     Staff became aware of filings with the FCC asking for  
5     clarification as to what information must be released in  
6     emergency-type situations.

7               For instance, some emergency providers apparently  
8     are claiming that the federal CPNI rules allow the release of  
9     information that might be contained in things such as a credit  
10    report obtained by the telecommunications company, or  
11    requesting other character-type information that might be  
12    known by companies that were small enough to know the customer  
13    on a personal level.

14              The proposed language was an attempt to clarify  
15    that it was not acceptable to release such information in the  
16    name of CPNI. However, because of the comments filed in this  
17    pro-- proceeding where the company has had concerns and  
18    suggested that the language actually expanded what they were  
19    interpreting as to being released to emergency-type providers,  
20    Staff proposes to modify Section 2C4 as follows: A  
21    telecommunications company may use, disclose, or permit access  
22    to CPNI to public safety answering points (PSAP) if the PSAP  
23    claims it -- claims it needs information to respond to an  
24    emergency.

25              Information to be released shall be limited to

1 subscriber list information, as defined in  
2 4 CSR 240-33.160.1S. Several parties object to the addition  
3 of agents, affiliates, joint venture partners or independent  
4 contractors to various places in Section 382 and Section 6C.

5           These terms were added to clarify that  
6 non-regulated entities that receive CPNI pursuant to this rule  
7 could not further release that information to other entities.  
8 Because of the concerns and confusion, Staff recommends  
9 Section 3A2 and Section 6C be modified to request the federal  
10 rules verbatim.

11           Staff further recommends a new section, 6F, be  
12 added as follows: A telecommunications company that releases  
13 CPNI to a non-regulated entity pursu-- pursuant to this rule  
14 shall inform the non-regulated entity that CPNI shall not be  
15 released to any other entity.

16           Several parties object to the requirement that  
17 CPNI customer notification should use at least a 12-point  
18 font. The Commission directed Staff to make sure that  
19 customer CPNI notification was easily identifiable.

20           The federal rules require CPNI notifications to be  
21 clearly legible and use "sufficiently large font." Staff is  
22 not what sure what qualifies as sufficiently large font, thus  
23 Staff made the suggestion the rules clearly spell out a  
24 commonly used font size, such as 12-point font.

25           Section 4C7 of the rule says that any statement

1     that indicates customer approval of CPNI may enhance a  
2     company's ability to tailor services to customer's needs.  
3     SBC objects to the requirement that was added that says, this  
4     statement shall be no larger than the font used in that  
5     notification.

6             SBC states that the requirement is an attempt to  
7     regulate the company's marketing practices. Staff made this  
8     recommendation not to regulate marketing practices, but to  
9     provide further clarification and legibility to the customer.

10            The purpose of the notification is to allow  
11     customers to understand the consequences of opting in or  
12     opting out.

13            A larger font says -- that says stating approval  
14     allows companies to tailor services to customer needs  
15     downplays the requirement that customers should be able to  
16     choose when and how personal information is released.

17            A few entities comment or object to language in  
18     Section 5, which sets forth CPNI requirements in cases of  
19     bankruptcy, cessation of operation, mergers, et cetera.

20            The proposed rules apply when an entire customer  
21     base is transferred to a new carrier as a result of such  
22     transactions. In such instances the customer is switched to a  
23     new provider as a result of no action of their own.

24            Therefore, the move with respect to CPNI should be  
25     as seamless as possible for the customer. They should not



1 have to opt-in or opt-out, again, just because they were  
2 transferred to a new provider.

3 The proposed language is consistent with the  
4 comments the Missouri Commission filed with the FCC in  
5 response to a further notice of proposed rulemaking on  
6 CPNI issues. However, further clarification Staff -- the  
7 proposed rule does not apply to those customers that would be  
8 transferred to the carrier of last -- of last resort under the  
9 Snap-back Rule, which is 4 CSR 240-32.120.

10 In such instances the carrier of last resort would  
11 send new notification to those customers that remain a  
12 customer of that carrier of last resort after the 30-day  
13 requirement of the Snap-back Rule expires. Staff suggests  
14 Section 5 be modified to reflect these clarifications.

15 Finally, several competitive companies suggest the  
16 rules be expanded to protect against some issues of CPNI for  
17 anti-competitive purposes. In Staff's opinion this suggestion  
18 and the associated proposed language goes beyond the intent of  
19 the proposed rule, which is to protect customer privacy under  
20 392.185.

21 Language proposed by AT&T and supported by other  
22 competitive carriers addresses CPNI usage in wholesale  
23 situation. This language would require significant review and  
24 fiscal analysis.

25 And that's the end of our formal comments. And I'd

1 be happy to answer any questions.

2 JUDGE JONES: Just a few questions, Ms. Dietrich.  
3 It -- it sounds like -- going off what I just heard about the  
4 12-point font, is that something that Staff is not wanting to  
5 change in its proposed rule?

6 MS. DIETRICH: The Staff is not proposing that it  
7 be changed -- that it provides clarification to the FCC's  
8 rules.

9 JUDGE JONES: And the FCC's rules simply say that  
10 it be legible?

11 MS. DIETRICH: It be legible and -- just  
12 One second -- sufficiently large font. And that's the part  
13 that seems to need clarity what sufficiently large font means.

14 JUDGE JONES: Have -- I remember reading through  
15 something where a 10-point font was referred to. Is -- is --  
16 is that not sufficiently large?

17 MS. DIETRICH: A 10-point font probably would be  
18 acceptable, as long as, you know, that was the standard in the  
19 rest of the bill -- as long as it wasn't something that was  
20 more or less like hidden in the fine-print-type thing.

21 JUDGE JONES: I mean, telephone companies right now  
22 must be using some font.

23 MS. DIETRICH: Uh-huh. Yes.

24 JUDGE JONES: Through their interpretation of what  
25 sufficiently large is, do you know what font they're using

1 now?

2 MS. DIETRICH: I have had some discussions, and  
3 like you -- you mentioned, somebody in their comments said  
4 they're using 10-point font. Another company that I had  
5 discussions with said that it's not actually in font, it's in  
6 pixels. And, you know, so it's hard to say what -- to  
7 coordinate those two numbers -- what a font would be to what a  
8 pixel number would be.

9 JUDGE JONES: Okay. More generally, do you know if  
10 the FCC requirements speak to the state's discretion with  
11 regard to CPNI?

12 MS. DIETRICH: The FCC said it would be on a  
13 case-by-case basis. If concerns were raised, that they would  
14 take a look at what states are proposing.

15 JUDGE JONES: Are there any pre-emption conflicts  
16 going on in other states with regard to the rules that they've  
17 promulgated?

18 MS. DIETRICH: The one that comes to mind is  
19 Washington State has been appealed by the -- one of the  
20 telecommunications carriers in that area. And at least so far  
21 the courts are supporting the carriers saying that the  
22 Washington State rules go well beyond the FCC's rules.

23 JUDGE JONES: Okay. So the court seemed -- you're  
24 saying seemed to say that that's okay?

25 MS. DIETRICH: No. The court did not -- the court

1     said that that was not okay -- that the Washington rules went  
2     too far.

3                 JUDGE JONES:   Okay.   But as far as you know, they  
4     don't give guidance on what's too far?

5                 MS. DIETRICH:   No.   Huh-uh.

6                 JUDGE JONES:   Do the Staff's proposed rules go as  
7     far as the Washington --

8                 MS. DIETRICH:   No --

9                 JUDGE JONES:   -- rules?

10                MS. DIETRICH:   -- they do not.   And especially with  
11    the modifications that we're suggesting today which were to  
12    provide clarification, the intent was not to go as far beyond  
13    the federal rule as what commenters said the rules actually  
14    did.

15                JUDGE JONES:   Now, I had a good sense of how much  
16    the proposed rule differed from the federal law.   But now that  
17    Staff is suggesting even changes to that proposal rule, I'm  
18    not real sure now.

19                MS. DIETRICH:   Uh-huh.

20                JUDGE JONES:   I take it there still remains some  
21    difference between federal law and Staff's proposed rule, even  
22    after the changes?

23                MS. DIETRICH:   Correct.

24                JUDGE JONES:   And I -- I believe I heard you say a  
25    new fiscal analysis will need to be conducted?

1 MS. DIETRICH: No.

2 JUDGE JONES: Well --

3 MS. DIETRICH: If -- if the Commission considered  
4 AT&T's proposal for that language, then a new fiscal analysis  
5 would need to be conducted.

6 JUDGE JONES: There won't be any fiscal impact to  
7 the public monies; is that true?

8 MS. DIETRICH: Not with the what Staff is  
9 proposing, and the changes Staff is proposing.

10 JUDGE JONES: What impact will it -- how much will  
11 it cost the average telephone company to comply with the  
12 difference in our rule -- our proposed rule here at the PSC  
13 and the federal law?

14 MS. DIETRICH: In Staff's opinion the fiscal impact  
15 would be minimal, because -- especially with the  
16 clarifications that we're providing today, because the intent  
17 was not to go as far beyond the federal rule as what  
18 commenters were suggesting the rule went.

19 The only additions -- except for the -- the change  
20 in font, which was to provide the clarity that the Commission  
21 asked for, the only additions were the -- was the information  
22 on PSAP, which I think we've clarified with the information  
23 that the telecommunications company says should be provided;  
24 the information on bankruptcy, which may still be a concern.

25 But we tried to clarify that the intent was only

1 the customer -- or the CPNI information would only follow when  
2 the entire customer base was transferred to a new company. It  
3 was not intended that any type of customer who would transfer,  
4 the CPNI had to follow or in the case of the Snap-back Rule  
5 where the carrier of last resort gets the company and they're  
6 only -- or the customer, and they're only required to keep  
7 them for 30 days.

8 And then the customer either leaves or stays,  
9 depending on what's decided. But in those instances, because  
10 of the circumstances, the CPNI would not be expected to  
11 follow. It's when the entire customer base was transferred to  
12 a new company, as a result of the bankruptcy, merger, whatever  
13 it might be.

14 So those are some of the major differences that  
15 remain. And several of the other things where com-- the  
16 company's express concerns we are going -- removing the  
17 language and going back to exactly what the federal rule says.

18 JUDGE JONES: Oh. I understand the -- Staff's  
19 interpretation of what font may or may not -- or should or  
20 should not be used, because that is interpretive. But in  
21 places where definitions are different in federal law -- I  
22 mean, where there's an actual difference and it's not left to  
23 interpretation, why would Staff want to differ from the  
24 federal law?

25 MS. DIETRICH: Well, the original intent was that

1    this is a Missouri rule, so we should use terms that are used  
2    in Missouri.  For instance, we call things telecommunications  
3    services, the FCC calls it communication service.

4               But apparently there was enough difference in the  
5    terms that we proposed that it created great concern.  So we  
6    are saying, you know, in those instances either go back to the  
7    FCC's rule and -- where they do define it and use their terms,  
8    or in some of the other instances use FCC's proposed language,  
9    for instance, independent contractor, joint venture partner,  
10   things like that.

11              JUDGE JONES:  And even more broader, what's the --  
12   what's the purpose of even having a rule if there's already a  
13   federal rule in place that companies have to comply with?

14              MS. DIETRICH:  The Commission felt that because of  
15   the statutory requirement in Section 392.185 where they are  
16   given the direction or the mandate to protect consumer privacy  
17   that it was necessary to have a Missouri rule to have  
18   something to say this is how we're protecting consumer  
19   privacy.

20              We have this CPNI rule, which largely reflects the  
21   federal rule with -- with some additions or modifications.

22              JUDGE JONES:  Can we -- can't we apply federal  
23   rules without our own rule?

24              MS. DIETRICH:  I -- I think that's an option.  
25   And -- and that was discussed with the Commission.  But, like

1 I said, they -- they felt that because of that specific  
2 statutory reference, that it would be good to have the same  
3 rule in Missouri.

4 JUDGE JONES: Okay. Now, the companies that I  
5 believe are here now are -- were they aware of the changes  
6 that you -- that you proposed here today prior to today?

7 MS. DIETRICH: I've had conversations with  
8 One company that had major concerns, and we discussed some of  
9 the changes. I haven't had an opportunity to talk with  
10 everybody since comments were filed.

11 JUDGE JONES: And I assume that you'll file  
12 something that reflects those changes?

13 MS. DIETRICH: Typically we do not.

14 JUDGE JONES: Okay.

15 MS. DIETRICH: It is done through the discussions  
16 in the final order of rulemaking.

17 JUDGE JONES: I see. All right. I -- I don't have  
18 any other questions.

19 MS. DIETRICH: Okay.

20 JUDGE JONES: You may step down.

21 (Witness excused.)

22 MS. DIETRICH: Okay.

23 JUDGE JONES: Is there anyone else here who would  
24 like to testify in support of the rule?

25 Mr. Dandino?



1           Please state your name for the record.

2           MR. DANDINO: Michael Dandino with the Office of  
3 the Public Counsel.

4           JUDGE JONES: Will you raise your right hand?

5           (MR. MICHAEL DANDINO WAS SWORN.)

6           JUDGE JONES: You may proceed.

7           MR. DANDINO: Thank you, Your Honor.

8           The Office of the Public Counsel supports this  
9 Rule -- this rulemaking. The Staff provided many of the  
10 reasons, and we agree with the Staff on -- on -- for those  
11 reasons.

12           We also agree with the changes that the Staff  
13 recommended. We think those are reasonable. And we believe  
14 that this rule is reasonable and -- and is not burdensome to  
15 the -- to the industry.

16           As Ms. Dietrich pointed out, Section 392.185 gives  
17 the -- indicates the Legislature's intent to protect the  
18 privacy of consumers. And, of course, that job falls to the  
19 Commission as -- as the -- as the body that implements the  
20 state law -- telecommunications law.

21           Your Honor, you raised the point of why there's a  
22 federal law, why do we need a -- a local law -- a state law.  
23 Well, when -- it's my understanding that the FCC allowed the  
24 telecommunications company after option to either use opt-in  
25 or opt-out for disclosure to affiliates, third-party agents,

1 joint ventures parties providing telecommunications-related  
2 service.

3 And -- and that the opt-in was only for disclosure  
4 to non-affiliated third parties and other affiliates. And  
5 basically the FCC said that the states could have more  
6 stringent standards, as long as they're not in conflict.

7 And I think what the -- what the -- the rule  
8 here -- what it essentially boils down to is if there's no  
9 other requirement for the -- the opt-in -- or -- or that the  
10 opt-in is probably the default requirement. And I think  
11 that's -- that's important.

12 This rulemaking also provides some of the  
13 definitions that were -- that were not fully addressed in the  
14 FCC. It provides some Missouri-specific terminology. But I  
15 think it also reflects a -- in that -- that consumers have a  
16 heightened concern for privacy.

17 In addition with the out -- out provisions, that's  
18 more in the terms of a negative response aspect. And that's a  
19 procedure which -- at least that Missouri has met with some  
20 criticism in the terms of -- or merchandising and has been  
21 considered a misleading or -- or it is a generally prohibited  
22 business practice.

23 So Missouri is -- is sensitive on the negative  
24 response for -- for marketing. And I think that in a way, at  
25 least in -- in spirit, it carries over with the opt-in

1 requirements, and also with the form of the notice.

2 I think the -- the Commission has a right to --  
3 to -- to set the standards by which these -- these notices  
4 will -- will provide actual notice to the customers.  
5 Bef-- really the customer is put at the advantage. They have  
6 to wade through all of this information and verbiage. And if  
7 it's an opt-out, they have to decide whether, you know, they  
8 have to take any action or not while with the opt-in it would  
9 be more in the company's best interest to make it clear and  
10 easy.

11 That way a customer could -- if -- if they want to  
12 encourage the customer and -- and -- and give them the  
13 incentive to -- to opt in, then the company should make it  
14 clear and -- and reasonable and fairly easy for them to -- to  
15 exercise that right.

16 And I believe that's -- that's all the comments we  
17 have, Your Honor. Thank you.

18 JUDGE JONES: Have -- have -- Mr. Dandino, have --  
19 has the Public Counsel gotten complaints from consumers who  
20 are involved?

21 MR. DANDINO: Not that I -- I recall. We did a  
22 couple -- a while ago on -- on some -- some forms, I think.  
23 And it's -- it's been in the nature of about two years ago or  
24 a year ago when a lot of that was coming around.

25 I -- especially -- we've also received some -- you

1 know, saw some complaints about when other businesses that  
2 the -- are issuing those privacy standards.

3 JUDGE JONES: Well, I know personally I don't like  
4 it when anybody calls me at home, based on having gotten my  
5 telephone number and they want to sell business. I don't  
6 particularly like it.

7 But I haven't shared that with anyone, well, until  
8 now, but -- how is it that you come to know that consumers --  
9 I mean, what consumers feel? How do -- how do we know that?

10 MR. DANDINO: Well, essentially we have -- we have  
11 to -- if we have complaints through it, I kind of watch what  
12 some of the other consumer advocates are talking about,  
13 what -- you know, what's the problems in their area,  
14 what -- what concerns are being raised and -- and just kind of  
15 watch the -- you know the general press on some of the  
16 reaction to it.

17 We don't go out and take surveys. That's expensive  
18 and it's -- it may not be very effective. And, you know,  
19 sometimes when we only get two or three calls, while that's  
20 maybe only be the tip of an iceberg, because it takes a while  
21 for people to figure out who we are and then how to reach us.

22 Sometimes they get a -- the Commission would get  
23 more complaints than we would. And -- and a lot of it with  
24 the no-call list, I think a lot of people have been  
25 complaining to the Attorney General's Office or just using the

1 no-call -- opting out for doing the no-call in order to try to  
2 prevent their -- to protect their privacy.

3 JUDGE JONES: Let me make sure I understand the  
4 opt -- the difference between opt-out and out-in. Opt-out  
5 sounds like you're saying you don't want information  
6 disseminated, opt-in sounds like you do; is that correct?

7 MR. DANDINO: The opt -- the opt -- I think it's  
8 the other way -- it's the other way, isn't it? I keep  
9 getting confused. The opt-in --

10 JUDGE JONES: Ms. -- Ms. Dietrich, you can answer  
11 that question.

12 MS. DIETRICH: The -- the opt-in would be when the  
13 customer makes an affirmative statement saying their  
14 information may will released. Opt-out is when the company  
15 can assume that the information is -- can be released after  
16 30 days or whatever timeframe is set up, absent any kind of  
17 customer objection to that release.

18 MR. DANDINO: See, I think it's just -- even this  
19 terminology itself is -- is -- is confusing to me. I'm sure  
20 it's more confusing to my clients.

21 JUDGE JONES: Now, earlier you said that the  
22 FCC said that our rules can be more stringent, but not in  
23 conflict with their rules.

24 Is -- is that in the law, is that something that  
25 they've --

1           MR. DANDINO: I think that was in their -- their  
2 order back in July of 2002.

3           JUDGE JONES: Okay. All right. I don't have any  
4 other questions.

5           MR. DANDINO: Thank you, Your Honor.

6           JUDGE JONES: Thank you, Mr. Dandino.

7           JUDGE JONES: Is there anyone else here who would  
8 like to speak in support of the rule?

9           (No response.)

10          JUDGE JONES: Seeing no one, I take it the  
11 remainder of you are speaking in opposition of the rule. Is  
12 there anyone who'd like to go first?

13          MS. MACDONALD: I'll go.

14          JUDGE JONES: Please step forward.

15          Can you state your name for the record, please?

16          MS. MACDONALD: My name is Mimi MacDonald.

17          JUDGE JONES: And are you a consumer or are you the  
18 representation?

19          MS. MACDONALD: No, I -- I represent Southwestern  
20 Bell Telephone, L.P., doing business as SBC Missouri. My  
21 business address is One SBC Center, Room 3510, St. Louis,  
22 Missouri 63101.

23          JUDGE JONES: And will you please raise your right  
24 hand?

25          (MS. MIMI MACDONALD WAS SWORN.)

1 JUDGE JONES: Thank you, Ms. MacDonald. You may  
2 proceed.

3 MS. MACDONALD: Thank you.

4 Good morning. As SBC indicated in its written  
5 comments, proposed Rule 4 CSR 240-33.160 is unnecessary. As  
6 the Commission is aware, Congress enacted Section 222 of the  
7 Telecommunications Act of 1996 mandating that every carrier  
8 has a duty to protect the confidentiality of Customer  
9 Proprietary Network Information or CPNI.

10 Over the next six years the FCC ostensibly examined  
11 the scope and meaning of Section 222 issuing three separate  
12 orders, the CPNI Order, the CPNI Reconsideration Order and the  
13 third Report and Order.

14 The FCC carefully balanced carrier's first  
15 amendment rights in consumer privacy interests so as to permit  
16 carrier's flexibility in their communications with customers  
17 while providing a level of protection to consumers privacy  
18 interests that Congress envisioned under Section 222.

19 As a result of the FCC's extensive examination, the  
20 FCC enacted implementing rules regarding telecommunication --  
21 telecommunication carrier's use of CPNI. Those rules are  
22 codified in Sections 64.2001 through 2009 of the Code of  
23 Federal Regulations.

24 Because Section 222 of the Act, as well as the  
25 FCC's implementing rules apply to all carriers, there is quite

1 simply no need to codify these rules at the state level.

2           Moreover, proposed rule 4 CSR 240-33.160 goes  
3 beyond the FCC's requirement and imposes new requirements that  
4 will be administratively burdensome compliance issues for  
5 carriers like SBC Missouri, which operate in multiple states.

6           Further, as SBC Missouri demonstrated in its  
7 written comments, many portions of proposed rule  
8 4 CSR 240-33.160, including several of the state's specific  
9 definitions appear to conflict with and be subject to  
10 pre-emption by the Act and/or the FCC's implementing rules.

11           Although SBC Missouri provided some examples of  
12 state-specific definitions that appear to conflict with and be  
13 subject to pre-emption by the Act and/or the FCC's  
14 implementing rules, in preparing for today's hearing I found  
15 four other instances of definitions that appear to conflict  
16 with and be subject to pre-emption by the Act/or the FCC's  
17 implementing rules.

18           I sincerely apologize for not recognizing these  
19 potential conflicts earlier; however, that failure on my part  
20 just emphasizes how very complication CPNI issues are.

21           So that the record is complete, I note the  
22 following additional definitional problems: Proposed rule  
23 4 CSR 240-33.160A defines affiliates as -- affiliate is any  
24 person including an individual, corporation, service company,  
25 corporate subsidiary, firm, partnership, incorporated or



1     unincorporated association, political subdivision, which  
2     directly or indirectly through one or more intermediaries  
3     controls, is controlled by or is under common control of the  
4     regulated telecommunications company.

5             This definition is different than the definition  
6     which appears in the Act 47 USC Section 3, Subpart 1.  
7     SBC Missouri proposes that the Commission modify proposed rule  
8     4 CSR 240-33.160A and adopt the definition in 47 USC  
9     Section 3, Subpart 1 which provides: The term "affiliate"  
10    means a person that (directly or indirectly) owns or controls,  
11    is owned or controlled by or is under common ownership or  
12    control with another person.

13            For purposes of this paragraph the term "own" means  
14    to own an equity interest (or equivalent thereof) of more than  
15    10 percent.

16            Next, proposed rule 4 CSR 240-33.160I defines  
17    customer premise equipment as: Customer premise equipment is  
18    equipment employed on the premises of a customer to originate,  
19    route or terminate telecommunications. The use of the word  
20    "customer" is overbroad and appears to include wholesale  
21    customers.

22            Moreover, the definition conflicts with the  
23    definition set forth in 47 USC Section 3, Subpart 14, which  
24    provides the term "customer premise equipment" means equipment  
25    employed on the premises of a person (other than the carrier)

1 to originate, route or terminate telecommunications.

2 SBC Missouri proposes that the Commission adopt the  
3 definition set forth in 47 USC Section 3, Subpart 14 that I  
4 just referenced.

5 Third, proposed rule 4 CSR 240-33.160N defines  
6 Local Exchange Company as: Local Exchange Company (LEC) is  
7 any company engaged in the provision of basic local exchange  
8 service. This definition conflicts with the definition set  
9 forth in 47 USC Section 3, Subpart 26.

10 SBC Missouri proposes the Commission modify  
11 proposed rule 4 CSR 240-33.160N and adopt the sentence of the  
12 definition in 47 USC Section 3, Subpart 26 which provides the  
13 term Local Exchange Carrier means any person that is engaged  
14 in the provision of telephone exchange service or exchange  
15 access.

16 I note that the second sentence addresses CMRS in  
17 the -- in the federal definitional section. And since the  
18 Commission does not have jurisdiction over CMRS, that portion  
19 of the definition in the Act need not be included in the  
20 Missouri rule, though it would not be objectionable if it were  
21 to be included.

22 Four, proposed rule 4 CSR 240-33.160(1)R defines  
23 public safety answering point as -- and I quote: Public  
24 safety answering points (PSAP) is a communications location  
25 used by public safety agencies for answering emergency telephone

1 service calls which originate in a given area.

2 A PSAP may be designated as primary or secondary,  
3 which refers to the order in which calls are directed for  
4 answering. PSAPs may be located at police, fire or emergency  
5 medical service communication centers or may be located in a  
6 specialized centralized communication center which handles all  
7 emergency communications for an area. This definition is  
8 different than the definition which appears in 47 USC  
9 Section 222H4.

10 SBC Missouri proposes that the Commission modify  
11 proposed rule 4 CSR 240-33.160, Subpart R, and adopt the  
12 definition in 47 USC Section 222H4 which provides: The term  
13 public safety answering point means a facility that has been  
14 designated to receive emergency calls and route them to  
15 emergency service personnel.

16 The inconsistencies between the definitions in  
17 proposed rule 4 CSR 240-33.160 and the Act, as well as the  
18 FCC's implementing rules will create unnecessary confusion  
19 because the differences do not appear to provide significantly  
20 greater rights to the citizens of Missouri with respect to  
21 their intra-state communications, but justify the time and  
22 effort that will be spent by the state explaining,  
23 interpreting and defending them.

24 Moreover as SBC expressed in its written comments,  
25 proposed rule 4 CSR 33.160 does not reflect the costs that

1 would be incurred by companies to comply with it. For these  
2 reasons, SBC Missouri submits that the Commission should  
3 refrain from enacting proposed rule 4 CSR 240-33.160.

4 If, however, the Commission decides to enact this  
5 rule, SBC Missouri strongly suggests that the Commission track  
6 the language set forth in Sections 64.2001 through 2009 of the  
7 Code of Federal Regulations verbatim to be supplemented with  
8 definitions set forth in the Act where appropriate.

9 SBC Missouri further respectfully suggests that  
10 when issuing an order adopting a Missouri-specific rule, the  
11 Commission specify that the intent of enacting the Missouri  
12 CPNI rules is to codify the federal CPNI rule at the state  
13 level. This may avoid problems with pre-emption.

14 Further, if any of the Missouri rules is truly  
15 state specific, SBC Missouri submits that the Commission  
16 should set forth a difference so that carriers are sure to  
17 comply with the state-specific requirement.

18 SBC Missouri also offers the following comments in  
19 response to comments filed -- filed by other carriers in  
20 its -- other carriers. In its June 2nd, 2004 letter to the  
21 Commission AT&T proposes a complete revision of the definition  
22 of CPNI. At the outset SBC Missouri submits that since the  
23 definition changes the very definition of CPNI, the proposed  
24 definition would need to be printed in the Missouri Register  
25 thereby allowing ALLTEL Communications Companies sufficient

1 time to consider and comment on this definition.

2 But, in any event, AT&T's definition of CPNI should  
3 be rejected outright. For years in various proceedings  
4 AT&T has attempted to preclude use of information by SBC. The  
5 Commission has not accepted AT&T's position in the past and  
6 should not do so here.

7 The fact of AT&T's proposal would be to keep  
8 information from the Commission that -- that the Commission  
9 needs to do its job. That is the effect of AT&T's effort to  
10 prevent use of information for -- and I quote -- regulatory  
11 advocacy.

12 The CLECs tried to legislate similar legislation  
13 during the 2004 legislative session using language that is  
14 substantially similar to the language that AT&T proposed in  
15 its June 2nd letter. The legislation went nowhere.

16 AT&T's proposal is unlawful in that it is contrary  
17 to the Act and the FCC's implementing rules. Moreover, it's  
18 an unconstitutional denial of the right to engage in  
19 commercial speech.

20 In short, AT&T's definition of CPNI is another  
21 attempt to obtain reg-- a regulatory advantage cloaked in  
22 "consumer protection." AT&T's definition should be rejected.

23 I also have a few comments regarding comments that  
24 have been made by Ms. Dietrich on behalf of the Staff of the  
25 Public Service Commission and Mr. Dandino.

1           First, I tried to track exactly what Ms. Dietrich  
2 was saying with regard to the change to 4 CSR 240-33.160(2)C4  
3 regarding -- regarding PSAPs use of CPNI. And I think that  
4 she said that the second sentence should say something to the  
5 effect of CPA-- that information given to a PSAP shall be  
6 limited to subscriber list information.

7           The problem that I have with that suggestion is  
8 that subscriber list information is not CPNI. So you've got a  
9 definitional jumble going on there. And the fact that it's  
10 not CPNI is specified in the Act 47 USC Section 222H(1)B.

11           Regarding the use of 12-point font, SBC Missouri  
12 stands on the comments that it already submitted, and  
13 maintains that 12-point font is completely unnecessary.

14           Not only did Staff not comment on the fact that the  
15 cost consideration for carriers would be in excess of \$500,  
16 there's no indication that any customer has complained that  
17 the notification isn't in sufficiently large print for the  
18 customer to be able to read it.

19           Furthermore, if there is a specific font size  
20 requirement regarding CPNI, that font size may be larger than  
21 other communications that -- or telecommunication carrier has  
22 with its customers thereby detracting from other messages that  
23 are required at both the state and federal level that may be  
24 every bit as important. And to increase the bill size to  
25 12-point font on everything would be quite simply cost

1 prohibitive.

2           Ms. Dietrich also talked a little bit about the  
3 opt-in, opt-out provisions regarding bankrupt companies.  
4 SBC Missouri maintains that its position regarding this should  
5 be the one that the Commission adopts.

6           And as an illustrative example, I offer the  
7 following: While we do not want to burden customers with  
8 telling them their CP-- CPNI rights more than they need to be  
9 advised of them, if a -- if a bankrupt carrier came to -- all  
10 the customers from a bankrupt carrier came over to SBC, we  
11 don't know when the -- the bankrupt carrier obtained the  
12 CPNI approval.

13           So if they obtained it literally one year and  
14 364 days ago, on Day 1 when they were transferred to us, we  
15 would have -- we would have their CPNI rights, but on Day 2  
16 they're past their two years and we would, again, need to  
17 advise them of their CPNI rights.

18           And it would just be quite simply a recordkeeping  
19 nightmare for carriers to try to figure out when they obtained  
20 CPNI notice -- when it was.

21           Further, as we indicated in our -- in our pre-filed  
22 comments, we have no way of getting that information from the  
23 carriers into the SBC records. And for these reasons we  
24 propose alternative language which we think would be workable  
25 for all carriers involved.

1           Finally, with respect to Mr. Dandino's comments, I  
2   think he said something to the effect of opt-out notification  
3   has been found to be misleading and generally -- and a  
4   generally prohibited practice.

5           That is not the case in my estimation, if I tracked  
6   what he was saying. And, in fact, it's allowed not only under  
7   the FCC's CPNI rules, but it would also be allowed under the  
8   proposed Missouri Commission CPNI rules.

9           That's all the comments that I have at this time;  
10   however, I'd be happy to answer any questions that you have on  
11   this topic.

12           JUDGE JONES: Okay. Well, I'm -- Ms. MacDonald,  
13   I'll start in -- backwards and --

14           MS. MACDONALD: Okay.

15           JUDGE JONES: -- work my way forward.

16           MS. MACDONALD: Okay.

17           JUDGE JONES: If SBC gets customers from a bankrupt  
18   company, do you notify the customers that their service has  
19   been changed?

20           MS. MACDONALD: Well, in the case of a bankruptcy,  
21   what could happen is the -- the bankrupt court could order all  
22   of the trusts for -- or all of the customers transferred to a  
23   new carrier. And let's say SBC decided to buy that customer  
24   list.

25           So in that situation we would prefer to advise the



1 CP-- advise the customers of their CPNI rights when they came  
2 over to SBC, and that's the proposal we've made.

3 JUDGE JONES: Okay. As opposed to?

4 MS. MACDONALD: As opposed to relying on any  
5 previous CPNI authorization that they gave the bankrupt  
6 carrier. Because we don't have any way to get that -- that  
7 notification into our system. And even if we could get it  
8 into our system, we still have the problem with the customer  
9 getting their CPNI notification every two years.

10 JUDGE JONES: Well, it -- it sounds like -- are  
11 you -- is -- is Staff's rule suggesting that you would adopt  
12 the rights that come from the bankrupt carrier?

13 MS. MACDONALD: Right.

14 JUDGE JONES: So you would impose more burden on  
15 SBC than Staff's rule does?

16 MS. MACDONALD: Well, I don't know if I would call  
17 it more burden, because in the long run it may be less of a  
18 burden.

19 We don't have to rely on somebody's -- some other  
20 carrier's CPNI authorization, which may or may not have been  
21 properly recorded and which we would subsequently have to live  
22 with. And, frankly, we just fig-- we just feel that since we  
23 are a new carrier to that customer, we should give them the  
24 opportunity to decide whether or not they want to give their  
25 CPNI authorization.

1           So in -- in some senses, yes, it's -- it's more of  
2 a burden for us, but we think it's a justifiable and  
3 reasonable burden because there's just no way to make the  
4 other scenario workable in today's environment.

5           JUDGE JONES: All right. And you also made a  
6 comment concerning PSAPs --

7           MS. MACDONALD: Yeah, PSAPs.

8           JUDGE JONES: -- being limited to subscriber line.  
9 It seems as though I recall your written comment saying that  
10 that is exactly what the federal law does.

11           MS. MACDONALD: Well, I -- that's what I'm saying.  
12 What I'm -- what I'm -- what I'm saying is that I -- I wrote  
13 down that Staff's proposal was to say something to the effect  
14 of, a telecommunications company may use, disclosure or permit  
15 access to CPNI public safety answering points if the PSAP  
16 claims it the needs information to respond to an emergency.

17           And then Staff proposed a subsequent sentence which  
18 says something to the effect of the CPNI shall be limited to  
19 subscriber list information. But subscriber list information  
20 is not CPNI under the federal definitions.

21           So it's a complete mismatch to have the second  
22 sentence proposed, unless I just misunderstood the proposal.

23           JUDGE JONES: Okay. You also said at some point  
24 AT&T's -- AT&T had some proposal where it was an attempt on  
25 their part to use regulatory means to keep you from getting

1 information from them.

2 MS. MACDONALD: No, not to keep us getting  
3 information from them, but to use information that we would  
4 already have, for example, the 911 database.

5 JUDGE JONES: Can you explain that a little  
6 further? I'm not real sure -- I'll -- what -- I'll tell you  
7 where I'm going, just so you know where I'm oriented.

8 You two are competitors, so I -- I suspect anything  
9 you do to them or they do to you, you'd do to them.

10 MS. MACDONALD: Well, okay. Let me try to -- try  
11 to give you an example, so maybe it would be just a little  
12 more clear.

13 In our competitive classification docket where we  
14 wanted to say that we -- we -- we were a competitive  
15 telecommunications carrier, we needed to provide information  
16 regarding the level of competition in the State of Missouri.

17 One way to -- to provide such information to the  
18 Commission was to look at the 911 records. And the  
19 911 records would not just be Southwestern Bell customers, it  
20 would be other carriers' customers, too.

21 So the aggregate information, we would use to show  
22 the level of competition. The language proposed by AT&T would  
23 say that we couldn't use that information to show the level of  
24 competition in the State of Missouri, thereby expressly  
25 limiting us to rely on whatever information they decided to

1 give to us or the Commission.

2 JUDGE JONES: When you say us and we, are you  
3 referring to SBC?

4 MS. MACDONALD: Right.

5 JUDGE JONES: So their proposed rule -- or their  
6 proposed change to the rule would only affect SBC?

7 MS. MACDONALD: No. I think it would affect  
8 everybody. And I think it's -- I think it's completely  
9 prohibited because it conflicts with the federal definition of  
10 CPNI.

11 They're saying more or less the federal definition  
12 is no good. It should include these other things which, to my  
13 knowledge, nobody has adopted this definition of CPNI that  
14 AT&T proposes.

15 And not only does it conflict with the federal  
16 definition, it would restrict our First Amendment free speech  
17 rights, because we should be able to use the information in,  
18 for example, our 911 database to advise the Commission of the  
19 actual level of competition in the State of Missouri.

20 JUDGE JONES: Okay. I believe you also mentioned  
21 Staff's assessment of the costs to companies is not reflective  
22 of what the costs may be?

23 MS. MACDONALD: Right. To go to --

24 JUDGE JONES: What would those costs be?

25 MS. MACDONALD: Well, we conducted a preliminary

1 analysis of just increasing the CPNI notification to customers  
2 to 12-point font, and our preliminary analysis included that  
3 at a minimum we would have a \$1,500 set-up fee, which would be  
4 three times the proposed fiscal cost estimate that is noted in  
5 the fiscal notes that were released when this rule was  
6 released.

7           And in addition to that, what we don't know  
8 definitively is whether there would be increased costs for  
9 paper, increased costs for ink to go on the paper and  
10 increased costs for postage to send out the 12-point notice  
11 when now we're doing it in 10-point font and we believe that  
12 that's sufficient for customers.

13           JUDGE JONES: Well, I'll be quite honest with you,  
14 I -- I've never even heard of customer proprietary network  
15 information until this case, which means out of all of the  
16 telephone bills I've paid, I've never been aware of it.

17           MS. MACDONALD: Yes, I've --

18           JUDGE JONES: Have you?

19           MS. MACDONALD: Do I know -- well, I do know what  
20 customer's --

21           JUDGE JONES: I mean, do you see that? In your  
22 telephone bills, have you seen information regarding this at  
23 all?

24           MS. MACDONALD: I'm sure that I have, because  
25 you -- I -- I mean, what I -- what I notice more than the

1 telecommunication bill, because I deal with that at work all  
2 day --

3 JUDGE JONES: Well, right.

4 MS. MACDONALD: -- is I -- I notice it more with  
5 respect to credit card companies. And they send you a similar  
6 notice saying we want to be able to use your information with  
7 our affiliates. If you don't want us to use it, clip out this  
8 form and send it in.

9 JUDGE JONES: Now, you're an attorney?

10 MS. MACDONALD: Uh-huh.

11 JUDGE JONES: Well, you're -- you're more apt to  
12 read all of that stuff, too, than --

13 MS. MACDONALD: That's true.

14 JUDGE JONES: -- than a consumer who is probably  
15 more concerned with an ability to pay the bill, let alone read  
16 all of the little inserts that are in it.

17 Do you think that increasing it from 10-point to  
18 12-point the cost to you will -- will be outweighed by the  
19 benefit to a customer?

20 MS. MACDONALD: Well, I don't think there's any  
21 indication that increasing to 12-point font would cause the  
22 customers to read it any more than they do now.

23 JUDGE JONES: Well --

24 MS. MACDONALD: I mean, I just don't know that  
25 there's a difference.

1 JUDGE JONES: It -- would there be -- would it  
2 cause them to read it more if it were 15- or 16-point font in  
3 red with black letters blacked around it -- then would they  
4 read it?

5 MS. MACDONALD: I -- I don't know. I -- I can't  
6 say that I've ever done a customer survey on what they are  
7 reading or what they aren't reading.

8 JUDGE JONES: Do you think that customers will be  
9 more likely to read something in the bill if it's in some  
10 reflective print that's like a little mirror with letters and  
11 you can really see it then -- do you think they will be able  
12 to see that?

13 MS. MACDONALD: Well, I mean, I think --

14 JUDGE JONES: I'm going to an extreme.

15 MS. MACDONALD: Right.

16 JUDGE JONES: Eventually you're gonna say, yeah,  
17 they will certainly see that.

18 MS. MACDONALD: Right. Well, I mean, I personally  
19 think that they can see the 10-point, and I think that the  
20 FCC has already extensively analyzed that -- that subject.  
21 And they -- they have to balance not only the consumer's  
22 privacy rights, but also our right to commercial free speech.

23 And I think that they didn't specify a font, but --  
24 but propo-- but enacted language that allowed us to interpret  
25 what sufficiently large was.

1                   And I have absolutely no knowledge that we've  
2   gotten any complaints from any customer that says they can't  
3   read the 10-point font.

4                   And further I would offer -- although I can't cite  
5   you a cite as I stand here -- we have -- we do -- we -- we do  
6   have -- there are studies that do indicate that 12-point font  
7   is easier for customers to read. And I could probably come up  
8   with the actual -- where that is. But as far as readability,  
9   10-point is considered sufficient.

10                  JUDGE JONES: Well, it's -- it's readable. But  
11   I -- it seems as though sufficiently large means not only  
12   readable, but noticeable also. Would you consider that to be  
13   part of the definition of sufficiently large?

14                  MS. MACDONALD: Well, I think it is noticeable in  
15   10-point font. And I also -- I mean, then you have to -- you  
16   have to also weigh what the FCC weighed, and you have to  
17   consider what all -- what information do you want them to  
18   read? Theoretically we want them to read the whole bill from  
19   beginning to end.

20                  But if you're gonna put the CPNI notice in a bigger  
21   print, then some of our notification that we're also required  
22   under federal or state laws to provide to the customer, what  
23   is that saying about the other notification? It's not as  
24   important?

25                  It might be as important to any specific customer,



1 and that's why I think mandating a specific requirement is a  
2 slippery slope that I don't think the Commission really wants  
3 to go down.

4 JUDGE JONES: Okay. Initially you started off by  
5 saying that you believe the rule is unnecessary?

6 MS. MACDONALD: I believe the rule is completely  
7 unnecessary.

8 JUDGE JONES: Do you feel that way in light of  
9 Section 392.185.

10 MS. MACDONALD: I -- I believe that with regard to  
11 that section the -- the fact -- I mean, there are -- there  
12 are -- to my knowledge are always gonna be federal rules. So  
13 if a consumer has a problem with CPNI, they can still contact  
14 the Commission and they -- you know, we would work through  
15 with that customer any problems that they may have with  
16 respect to the use of CPNI.

17 So I don't think that there needs to be a  
18 state-specific rule that mirrors the federal rule.

19 JUDGE JONES: All right. Are you aware of other  
20 states that have CPNI rules?

21 MS. MACDONALD: I am aware that other states have  
22 CPNI rules, although I would say that it's the minority of  
23 states. In our 13 states we only have 2.

24 JUDGE JONES: Okay. So you would argue, then, that  
25 these rules are unnecessary all over the country at the state

1 level?

2 MS. MACDONALD: I would.

3 JUDGE JONES: Okay. Okay. I don't have any other  
4 questions. Thank you, Ms. MacDonald.

5 MS. MACDONALD: Thank you.

6 JUDGE JONES: Other comments in opposition?

7 MR. DORITY: Good morning, Judge.

8 JUDGE JONES: Good morning. Please state your name  
9 for the record.

10 MR. DORITY: My name is Larry W. DORITY,  
11 D-O-R-I-T-Y.

12 JUDGE JONES: And you are representing?

13 MR. DORITY: I'm here this morning representing  
14 CenturyTel of Missouri, L.L.C. and Spectra Communications  
15 Group, L.L.C., doing business as CenturyTel.

16 My address is 101 Madison, Suite 400, Jefferson  
17 City, Missouri 65101.

18 JUDGE JONES: And will you please raise your right  
19 hand?

20 (MR. LARRY W. DORITY WAS SWORN.)

21 JUDGE JONES: Thank you, sir. You may proceed.

22 MR. DORITY: Thank you, Judge. And I can be very  
23 brief this morning.

24 I just wanted to note for the record that  
25 CenturyTel filed written comments on June 2nd in this

1 proceeding concurring in the comments filed by the Missouri  
2 Telecommunications Industry Association. And we also pointed  
3 out specific instances where the proposed Missouri rule and  
4 the federal CPNI rule would be in conflict.

5 Our message was that the federal rule adequately  
6 addresses this issue, and we should avoid such conflicts that  
7 would place carriers in difficult compliant situations.

8 I Agree with the comments of Ms. MacDonald that the  
9 rule actually is unnecessary; however, should the Missouri  
10 Commission, as the Staff suggests, feel the need to have  
11 something on the books in order to address the customer  
12 privacy purposes of Section 392.185, then I would suggest that  
13 they simply adopt by reference the -- the actual federal rule  
14 and thereby codify this area at the state level.

15 And again, I agree with the comments of  
16 SBC Missouri that there really is no need for action at the  
17 state level, that this area is adequately addressed by the  
18 federal CPNI rule.

19 And I would also want to go on record strongly  
20 objecting to AT&T's written comments, which as your Staff has  
21 suggested, go far beyond the intent and purpose of this  
22 proposed rule.

23 They are simply trying to interject intercarrier  
24 issues that have been rejected in other forms, and would  
25 require new publication to provide carriers lawful notice that

1     this subject was going to be addressed in the context of this  
2     rulemaking proceeding.

3                 And with that, Judge, that's all I have to -- to  
4     offer this morning.

5                 JUDGE JONES: Well, I only have a couple of  
6     questions, then.

7                 Well, you're -- you're suggesting that Missouri  
8     simply adopt the federal rule. What about those instances  
9     where Missouri has specific definitions that -- that aren't  
10    discussed on the federal level?

11                MR. DORITY: I believe Ms. Dietrich addressed that  
12    this morning. And I'll be honest, I was trying to write down  
13    as heartily as I could, the points that she was making, in  
14    terms of reacting and responding to the written comments that  
15    other carriers had made in the proceeding.

16                I believe many of our concerns and issues were  
17    addressed. I -- I think one of the points that she mentioned  
18    was the fact that there may still be a -- you know, a couple  
19    of definitions that would be -- need to be highlighted. In  
20    fact, I believe Ms. MacDonald may have addressed that as well.

21                To the extent that is absolutely required, then,  
22    you know, so be it. But at this point I'm not sure that it  
23    would require any action. I -- I -- I look forward to  
24    reviewing the transcript and having a chance to review those  
25    notes.

1 JUDGE JONES: Well, it -- it sounds like  
2 your -- your gut feeling is that you may tend to -- tend to  
3 support the changes that were made.

4 MR. DORITY: I believe most of the changes that  
5 Staff was suggesting would simply conform to the concerns that  
6 the other carriers have -- have addressed in their written  
7 comments -- many of them at least.

8 I know we pointed out the concern about the PSAP  
9 issue, and the fact that as a result of the proposed rule, the  
10 CPNI information that would be released would actually allow  
11 more information being released from the customer standpoint  
12 than -- than less.

13 And that we pointed out that the federal rule does  
14 reference the subscriber list information, which as Ms.  
15 MacDonald points out, is covered separately as a separate  
16 definition separate and apart from CPNI.

17 And as I understood Ms. Dietrich's comments this  
18 morning, I believe what they're attempting to do is limit the  
19 information to subscriber list information -- that is what  
20 would be provided to the PSAPs. It may be needed to be  
21 tweaked a little bit, but I think I agree with Ms. MacDonald's  
22 comments that trying to suggest that it's a part and parcel of  
23 the definition of CPNI may not be appropriate.

24 JUDGE JONES: Okay. Thank you, Mr. DORITY.

25 MR. DORITY: Thank you.

1 JUDGE JONES: Are there any other comments in  
2 opposition to the rule?

3 Good morning.

4 MR. KOHLY: Good morning.

5 JUDGE JONES: Please state your name for the  
6 record.

7 MR. KOHLY: My name is Matt Kohly, K-O-H-L-Y, with  
8 AT&T Communication Southwest, Incorporated.

9 JUDGE JONES: Mr. Kohly, will you raise your right  
10 hand, please?

11 (MR. MATT KOHLY WAS SWORN.)

12 JUDGE JONES: Thank you. You may proceed.

13 MR. KOHLY: I'm really here to respond to some of  
14 the comments made about AT&T's comments. The first thing I'd  
15 like to say is those comments -- this is not a competitive  
16 CLEC issue versus ILEC issue. AT&T's proposal would apply to  
17 all Local Exchange Carriers.

18 Everyone likes to run around saying AT&T is picking  
19 on the ILECs, and this is not the case. AT&T filed their  
20 comments. These were supported by five other Local Exchange  
21 Carriers.

22 We are simply seeking to prohibit the use of  
23 information for anti-competitive purposes. I do believe that  
24 is consistent with the intent of the rule in protecting  
25 customer privacy. The proposed rule actually states the

1 telecommunications company may not use, disclose or permit  
2 access to CPNI to identify or attract customers that call  
3 competing telecommunications service providers.

4 Consistent with that, it should not apply just to  
5 when you call. Your actual use is when you call a competing  
6 customer, but if you talk to a salesman or if you allow  
7 another carrier to look at your customer information -- the  
8 fact that you allowed that should then not be used against you  
9 or should not be used by the company. So it is consistent  
10 with customer protection and customer privacy.

11 And the idea that we're use -- we're proposing this  
12 rule to prohibit to somehow impair the Commission from doing  
13 its job is completely false. I mean, our proposed language  
14 actually has a sentence in there that says, nothing in this  
15 rule shall prohibit -- and I grabbed the wrong file as I left  
16 my office, but it as a sentence in there saying, nothing shall  
17 permit compliance with the Commission's request for  
18 information.

19 Certainly compliance is different than advoc--  
20 advocacy. We don't think we should use a 911 -- a  
21 911 database for advocacy purposes. If the Commission wants  
22 to send a data request or Staff wants to send a data request,  
23 nothing in our proposal would impair any company from  
24 complying with that and that's certainly not our intent.

25 And with that, I'll be happy to answer any

1 questions.

2 JUDGE JONES: What's -- what's AT&T's position on  
3 the 12-point font issue?

4 MR. KOHLY: We would like to see that eliminated.  
5 We believe that a 10-point font is adequate. We believe that  
6 the language in the FCC rules basically saying that it must be  
7 legible is sufficient. And typically when we provide the  
8 notice, we do it in the 10-point font.

9 JUDGE JONES: Well, legible could be an 8-point  
10 font, too.

11 MR. KOHLY: I understand.

12 JUDGE JONES: Why 10 instead of 8-point then?

13 MR. KOHLY: We chose 10. I believe it's in the  
14 FCC rules does not see fit to put it in 2-point font and bury  
15 it at the bottom of the bill. It should be legible and clear.  
16 We use 10-point font and think that's sufficient.

17 JUDGE JONES: Will it cost you more to use a  
18 12-point font?

19 MR. KOHLY: It will. We would have to change the  
20 billing. You'd obviously have more text taken up by it, which  
21 will also increase the billing costs.

22 I asked for a fiscal estimate of that impact, and  
23 they were not able to get one to me in time and I have not  
24 seen that.

25 JUDGE JONES: Okay.



1           MR. KOHLY: But the response was, it would  
2 certainly increase their cost.

3           JUDGE JONES: Okay. I don't have any other  
4 questions. Thank you, Mr. Kohly.

5           MR. KOHLY: Thanks.

6           JUDGE JONES: Are there any other comments in  
7 opposition to the rule?

8           (No response.)

9           JUDGE JONES: Seeing none, then we will conclude  
10 the hearing, and I thank you all for coming.

11          WHEREUPON, the public hearing was concluded.

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