

**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

**CENTURYTEL OF MISSOURI, LLC'S
MEMORANDUM OF LAW**

COMES NOW CenturyTel of Missouri, LLC ("CenturyTel"), pursuant to the Commission's Order Extending Exemption and Requiring Filing entered in this matter on April 19, 2006, and for its Memorandum of Law respectfully states as follows:

1. In its April 19, 2006 Order, the Commission directed all parties to file a Memorandum of Law addressing the following questions:

- How controlling is a purpose clause?
- How controlling is an order of rulemaking?
- If the purpose of the rule can be accomplished through narrow construction, may the Agency construe it broadly?
- If the Agency operated under a mistake of fact at the time of promulgation, but later learns of the mistake, can it lawfully alter its construction?
- What is the standard of vagueness – what parameters apply when construction rises to the level of substantive interpretation?

2. CenturyTel respectfully submits that the above questions regarding whether -- or to what degree -- language may be controlling as contained in, and the construction of, an administrative rule, are subsumed under the well-established

precedent that in interpreting statutes and rules, the same principles of construction are used. Vernon v. Director of Revenue, 142 S.W.3d 905 (Mo App. S.D. 2004). Accordingly, interpretation of a regulation must begin with its plain language. Romines v. Great-West Life Assur. Co., 865 F. Supp. 607, affirmed 73 F.3d 1457 (E.D. Mo. 1994).¹

In Dueker v. Missouri Div. of Family Services, 841 S.W.2d 772, 775 (Mo. App. E.D. 1992), the court held that “the legislature is presumed to have intended what a statute says directly.” Where the language of the statutory provision is clear and unambiguous, the rules of statutory construction do not apply.²

Commission Rule 4 CSR 240-29.040(4) contains no obligation requiring carriers to include Calling Party Number (“CPN”) in Category 11 billing records for wireless-originated calls. It merely states that:

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.

The Commission’s rules only require CPN to be delivered with each call (signaled), which is substantially different than a requirement to include CPN in billing records, which are exchanged many weeks after the call occurs.

¹ “If a regulation is unambiguous, intent can be determined from the language alone. Thus, the courts look first at an administrative rule’s text or plain language.” Am Jur 2d, Administrative Law, §246.

² Brownstein v. Rhomberg-Haglin and Associates, Inc., 824 S.W.2d 13, 15 (Mo. banc 1992). “An unambiguous administrative rule or regulation is not subject to judicial construction.” State Department of Licensing v. Cannon, 147 Wash. 2d 41, 50 P. 3d 627 (2002).

As stated in Wilson v. McNeal, 575 S.W.2d 802, 809 (Mo. App. 1978): “[C]ourts must construe a statute as it stands, and must give effect to it as it is written. [A] court may not engraft upon the statute provisions which do not appear in explicit words or by implication from other language in the statute.” *Id.* at 810 (citations omitted).

The only specific requirements in the Commission’s Enhanced Records Exchange Rule to provide CPN appear in Sections 29.040(1) and (2) and require “originating caller identification” to be delivered with a call.

- (1) All telecommunications companies that originate traffic that is transmitted over the LEC-to-LEC network shall deliver originating caller identification with each call that is placed on the LEC-to-LEC network.
- (2) All telecommunications carriers that transit LEC-to-LEC traffic for another carrier shall deliver originating caller identification to the other transiting carriers and to terminating carriers.

Again, the clear language of the rules themselves reflect that they only require the transmission of CPN with the call, and not as part of the Category 11 billing record. (See, Jantz v. Brewer , 30 S.W.3d 915, 918 (Mo.App. S.D. 2000), which provides that "the legislature is presumed to have intended what the law states directly, and to act intentionally when it includes language in one section of a statute but omits it from another." (internal citations omitted). Jantz also provides that "[a] disparate inclusion or exclusion of particular language in another section of the same act is 'powerful evidence' of legislative intent." *Id.*).

Respectfully submitted,

/s/ Larry W. Dority

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 1st day of May, 2006, to counsel of record.

/s/ Larry W. Dority

Larry W. Dority