

RULE TRANSMITTAL (PAGE 1)

MATT BLUNT

**Secretary of State
Administrative Rules Division
RULE TRANSMITTAL**

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SEP 03 2004

SECRETARY OF STATE
ADMINISTRATIVE RULES

A "SEPARATE" rule transmittal sheet **MUST** be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-33.160
 Diskette File Name Final Order of Rulemaking 4 CSR 240-33.160
 Name of person to call with questions about this rule:
 Content Marc Poston Phone 573-751-8701 FAX 573-751-9285
 Data entry Lesli Belt Phone 573-751-7499 FAX 573-751-9285
 Email address Marc.poston@psc.mo.gov
 Interagency mailing address Governor Office Building, 200 Madison St., 8th Floor, Jefferson City, MO
 Statutory Authority 386.250 Current RSMo date 2000
 Date filed with the Joint Committee on Administrative Rules Exempt per Sections 536.024 and
536.037, RSMo 2000, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED:

- | | |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Incorporation by reference materials, if any |
| <input checked="" type="checkbox"/> Cover letter | <input type="checkbox"/> Authority with history of the rule |
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Public cost |
| <input type="checkbox"/> Forms, number of pages <u> </u> | <input type="checkbox"/> Private cost |
| <input type="checkbox"/> Fiscal notes | <input type="checkbox"/> Hearing and comment period |

C. RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency rulemaking, (check one) ☐ rule ☐ amendment ☐ rescission ☐ termination
MUST include effective date
- ☐ Proposed Rulemaking (check one) ☐ rule ☐ amendment ☐ rescission
- ☒ Order of Rulemaking (check one) ☒ rule ☐ amendment ☐ rescission ☐ termination
MUST complete page 2 of this transmittal
- ☐ Withdrawal (check one) ☐ rule ☐ amendment ☐ rescission ☐ emergency
- ☐ Rule action notice
- ☐ In addition
- ☐ Rule under consideration

D. SPECIFIC INSTRUCTIONS: Please indicate any special instructions (e.g., publication date preference, identify material to be incorporated by reference, or forms included herein).

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NOTE: ALL changes MUST be specified here in order for those changes to be published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-3.560

1a. Effective Date for the Order

☒ Statutory 30 days

Specific date _____

1b. Does the Order of Rulemaking contain changes to the rule text?

☒ YES

☐ NO

1c. If the answer is YES, please complete section F. If the answer is NO, **STOP** here.

F. Please provide a complete list of the changes in the rule text for the order of rulemaking, indicating the specific section, subsection, paragraph, subparagraph, part, etc., where each change is found. It is especially important to identify the parts of the rule that are being deleted in this order of rulemaking. This is not a reprinting of your order, but an explanation of what sections, subsections, etc. have been changed since the original proposed rule was filed.

The Commission added to **subsection (1)(C)** the words “and interexchange” and deleted the words “*exchange access services; information services typically provided by telecommunications companies; operator services; and directory assistance services.*”

The Commission deleted **subsection (1)(D)** and re-lettered all subsequent subsections of section (1) by changing subsections (1)(E) through (1)(V) to (1)(D) through (1)(U).

The Commission deleted from **subsection (1)(G)** the words “*or any person or entity with which the telecommunications company has had a prior service relationship.*”

The Commission deleted from **subsection (1)(I)** the word “*customer*” and added the words “person (other than a carrier).”

The Commission added to **subsection (1)(J)** the words “third party who contracts with a telecommunications company for the provision of services to the telecommunications company, but who is not controlled by the telecommunications company” and deleted the words “*separate person, firm, or entity providing a telecommunications related or unrelated service under a contractual relationship to or for the telecommunications company or some other firm or entity.*”

The Commission changed **subsection (1)(L)** to note that the reference to subsection (K) should now reference subsection (J) due to the deletion of subsection (1)(D).

The Commission deleted from **subsection (1)(M)** the words “*company*” and “*has a financial or other interest in a specific project in which a telecommunications company has an interest,*” and added the words “agrees to share with a telecommunications company in the profits and losses of a business entity formed by the telecommunications company and the third party.”

The Commission deleted from **subsection (1)(N)** the word “*basic*” and added the words “or exchange access.”

The Commission deleted from **paragraph (2)(C)4** the word “*CPNI,*” the word “*is,*” and the words “*that CPNI information.*” The Commission added to the same paragraph the words “customer information,” the words “shall be,” and the words “subscriber list information.” The Commission also changed the same paragraph’s reference to 4 CSR 240-33.160(1)(H) to 4 CSR 240-33.160(1)(R).

The Commission added to **paragraph (3)(A)1** the sentence “A telecommunications company may elect not to apply the safeguards set forth in paragraph (3)(A)2 below to its agents or affiliates, however, if the telecommunications company so elects, then it shall be held responsible if its agents or affiliates further use, allow access to, or disclose customer CPNI.”

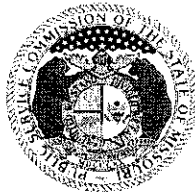
The Commission changed the requirement in **paragraph (4)(C)5** from “12-point font” to “10-point font.”

The Commission added to **paragraph (4)(C)7** the sentence “The notification required under subsection (4)(C) shall be in a font size no smaller than such statement.” The Commission deleted the sentence “*Such statement shall not be in a font size larger than the notification requirements.*”

The Commission deleted from **subsection (5)(C)** the word “*shall*” and added the word “should” and the sentence “If the exiting carrier does not transfer CPNI data to the new carrier, the company receiving the new customers shall send a new CPNI notice to the customers acquired from the exiting carrier.”

The Commission added **subsection (5)(D)**, which states “The provisions of this section do not apply to customers transferred to the carrier of last resort under the Commission’s snap-back rule, 4 CSR 240-32.120.”

The Commission changed **subsection (6)(C)** from “...shall retain the record for a minimum of one (1) year” to “...shall retain these records for all current and former customers for a minimum of one (1) year.”



Commissioners

STEVE GAW
Chair

CONNIE MURRAY

ROBERT M. CLAYTON III

JEFF DAVIS

LINWARD "LIN" APPLING

Missouri Public Service Commission

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Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

September 3, 2004

Matt Blunt
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, MO 65101

Dear Secretary Blunt,

RE: 4 CSR 240-33.160 Customer Proprietary Network Information

CERTIFICATION OF ADMINISTRATIVE RULE


I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Missouri Public Service Commission on this 3rd day of September 2004.

Statutory Authority: section 386.250.

If there are any questions regarding the content of this order of rulemaking, please contact:

Marc Poston
200 Madison
Jefferson City, MO 65102
Phone (573) 751-8701
Email: marc.poston@psc.mo.gov

Sincerely yours,


Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission

**Title 4—Rules of Department of Economic Development
Division 240—Public Service Commission
Chapter 33—Service and Billing Practices for Telecommunications Companies**

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ORDER OF RULEMAKING

SEP 03 2004

SECRETARY OF STATE
ADMINISTRATIVE RULES

By the authority vested in the Missouri Public Service Commission under sections 386.040, 386.250, 392.185(9), and 392.470 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-33.160 is adopted

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 3, 2004 (29 MoReg 732-735). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A hearing was held on June 8, 2004 in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Oral testimony and written comments were received during the comment period regarding proposed rule 4 CSR 240-33.160.

COMMENTS: Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC") commented that the proposed rule is unnecessary because 47 U.S.C. § 222 and 47 C.F.R. §§ 64.2001 through 64.2009 adequately protect Missouri consumers against misuse of customer proprietary network information ("CPNI").

RESPONSE: The Commission finds the proposed rule necessary and consistent with section 392.185(9) RSMo 2000, which states a purpose of Chapter 392 of the Missouri Revised Statutes is to protect consumer privacy. No changes have been made to the rule as a result of this comment.

COMMENTS: Several telecommunications companies commented that the rulemaking should be no different than federal rules 47 C.F.R. §§ 64.2001 through 64.2009.

RESPONSE AND EXPLANATION OF CHANGE: The Commission's proposed rulemaking essentially mirrors the federal rules with a few slight differences. Changes made in this Final Order of Rulemaking bring the proposed rule much closer to the federal rule. The few remaining differences between this rule and the federal rule provide further protections for Missouri consumers in areas of concern that were identified after the federal rules were implemented.

COMMENTS: SBC opposed the definition of "affiliate" in proposed subsection (1)(A). SBC believes the definition should be the same as the definition of "affiliate" in the Telecommunications Act of 1996 at 47 U.S.C. § 153(1).

RESPONSE: The Commission finds the proposed definition of "affiliate" is consistent with definitions of affiliate found in Chapters 20, 40 and 80 of the Commission rules and will not

change the meaning from the federal rule. No changes have been made to the rule as a result of this comment.

COMMENTS: SBC opposed the definition of “categories of service” in proposed subsection (1)(C) and proposes the definition be deleted or modified to be more consistent with the federal rules. Natelle Dietrich, an economist on the Commission’s Staff, recommended that the definition be changed to be similar to the federal definition in 47 C.F.R. § 64.2005(a).

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that the categories of service applicable in Missouri should be consistent with the categories of service applicable in the federal rule. It was not the Commission’s intent to change the categories of service to which the CPNI rules apply. The Commission will change (1)(C) to be more consistent with the definition found at 47 C.F.R. § 64.2005(a).

COMMENTS: SBC opposed including a definition of “CMRS” in proposed subsection (1)(D) because the term CMRS is not used anywhere in the rule.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds that defining CMRS is not necessary and will remove this definition from the rule. This change will require a renumbering of all subsequent terms defined in proposed subsections (1)(E) to (1)(V).

COMMENTS: SBC opposed the definition of “customer” found in proposed subsection (1)(G) and suggested deleting this definition from the rule. SBC suggested the definition would require companies to obtain CPNI approval to use a former customer’s CPNI for re-establishing service. Natelle Dietrich, an economist on the Commission’s Staff, suggested removing language from the definition of customer and adding language to the rule to address SBC’s concerns.

RESPONSE AND EXPLANATION OF CHANGE: The proposed rules are not intended to prevent a company from marketing to former customers. To address SBC’s concerns, the Commission finds it necessary to change the definition of “customer” by removing the language “or any person or entity with which the telecommunications company has had a prior service relationship” as proposed by SBC. The Commission will also add language to (6)(C) to clarify that a company is required to keep CPNI for all current and former customers for a minimum of one year.

COMMENTS: SBC opposed the definition of “customer premises equipment” (“CPE”) from proposed section (1)(I) and claimed the word “customer” could include wholesale customers. SBC proposed that the Commission use the definition of CPE from the Telecommunications Act of 1996 at 47 U.S.C. § 153(14).

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that the definition of CPE could be misconstrued to apply to wholesale customers. The Commission will change the definition of CPE to the definition used in the Telecommunications Act of 1996 at 47 U.S.C. § 153(14).

COMMENTS: SBC opposed the definition of “independent contractor” found in proposed subsection (1)(J). SBC claimed that the proposed rules are unclear and proposed a new definition. Natelle Dietrich, an economist on the Commission’s Staff, stated that the Staff did not object to SBC’s proposed definition.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds that the definition of independent contractor should be revised to a definition similar to the definition proposed by SBC.

COMMENTS: SBC opposed the definition of “joint venture partner” found in proposed subsection (1)(M). SBC stated that the terms “specific project” and “financial interest” are “too nebulous to be workable” and proposed a modification. Natelle Dietrich, an economist on the Commission’s Staff, stated that the Staff did not object to SBC’s proposed definition.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds that the definition of joint venture partner should be revised to a definition similar to the definition proposed by SBC.

COMMENTS: SBC opposed the definition of “local exchange company” in proposed subsection (1)(N) and suggested that the definition be changed to the definition used in the Telecommunications Act of 1996 at 47 U.S.C. § 153(26).

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees with SBC that the definition should be consistent with the definition found at 47 U.S.C. § 153(26) and will change the rule accordingly.

COMMENTS: SBC opposed the definition of “Public Safety Answering Point” (“PSAP”) from (1)(R) and suggested using the definition in the Telecommunications Act of 1996 at 47 U.S.C. § 222(h)(4).

RESPONSE: The Commission finds the proposed definition is consistent with the definition of PSAP found in 4 CSR 240-34.020(20) of the Commission’s rules regarding emergency telephone service standards. The Commission further finds that the proposed definition does not alter the meaning of PSAP found at 47 U.S.C. § 222(h)(4). No changes have been made to the rule as a result of this comment.

COMMENTS: AT&T Communications of the Southwest, Inc. (“AT&T”) submitted a proposal to add a new paragraph (2)(B)3 to the Commission’s proposed rule to address issues regarding the wholesale use of customer information. Natelle Dietrich, an economist on the Commission’s Staff, stated that AT&T’s proposal goes beyond the intent of the proposed rule.

RESPONSE: The Commission finds that the new language proposed by AT&T is beyond the scope of this rulemaking. Addressing these expanded issues would require additional research and fiscal analysis. No changes have been made to the rule as a result of this comment.

COMMENTS: SBC opposed proposed paragraph (2)(C)4 that allows CPNI access for PSAPs, and claimed the rule expanded the information released to PSAPs. Natelle Dietrich, an economist on the Commission’s Staff, proposed a modification to the rule to address SBC’s concerns.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds it necessary to modify (2)(C)4 to reflect that a telecommunications company may not use, disclose or permit access to CPNI to a PSAP and to clarify that a telecommunications company shall only be required to use, disclose and permit access to subscriber list information to a PSAP.

COMMENTS: SBC and Sprint Missouri, Inc. opposed including the terms “affiliate and agent” in subsection (3)(A) because they significantly expand the intent of the similar federal rules since the federal rules do not require confidentiality agreements with affiliates and agents. Natelle Dietrich, an economist on the Commission’s Staff, suggested that the rule be modified to parallel the federal rule. Ms. Dietrich and the Staff further recommended the addition of language to require telecommunications carriers to inform third parties that CPNI shall not be released to any other entity.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds it necessary to include the terms “affiliate and agent” in subsection (3)(A). The Commission’s intent in including these terms was to ensure that a company’s affiliates and agents adhere to the same consumer protections as the regulated company. However, to address the concerns raised by the parties, the Commission will add a sentence holding the telecommunications company responsible if its affiliates or agents further use, allow access to, or disclose customer CPNI, if that telecommunications company does not choose to enter into confidentiality agreements with its affiliates or agents as required by the rule.

COMMENTS: Comments from several telecommunications companies opposed the requirement in proposed paragraph (4)(C)5 for written notice to use at least 12-point font.

AT&T and SBC commented that the 10-point font currently used in the notice is adequate.

RESPONSE AND EXPLANATION OF CHANGE: The Commission included the 12-point font requirement to ensure the consumer notice is legible. The Federal Communications Commission’s rules require telecommunications companies to provide a notice that is “clearly legible” and that uses “sufficiently large type.” 47 C.F.R. 64.2008(c)(5). The Commission finds that a 10-point font requirement is sufficiently large to be legible and would prevent carriers from having to incur the expense of changing to a 12-point font. The Commission will replace “12-point font” with “10-point font” in (4)(C)5. The Commission will also add the word “to” in subsection (4)(C) between the words “carrier” and “use” to correct a grammatical error.

COMMENTS: SBC opposed the proposed paragraph (4)(C)7 font size requirement as an attempt to regulate marketing practices. Natelle Dietrich, an economist on the Commission’s Staff, commented that the font size requirement is to assist customers in understanding the opt-in and opt-out requirements.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds that paragraph (4)(C)7 is necessary to protect consumers from misleading practices that diminish the importance of the customer’s CPNI rights. The Commission will clarify paragraph (4)(C)7 to illustrate that this paragraph is regulating the opt-in and opt-out notice requirements rather than the marketing practices of telecommunications companies.

COMMENTS: SBC opposed proposed section (5) regarding the release of CPNI resulting from a bankruptcy, cessation of operations, merger or a transfer of assets. SBC stated that it does not have a system in place to accept opt-in/opt-out authorizations and it does not always receive customer information on customers transferred pursuant to a bankruptcy.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds that the transfer of CPNI data is necessary to help facilitate a seamless company transfer for the customer. However, the Commission will add language to subsection (5)(C) to reflect that if the bankrupt

company does not transfer CPNI data, the company receiving the new customers shall send a new CPNI notice to the customers acquired through the bankruptcy.

COMMENTS: Natelle Dietrich, an economist on the Commission's Staff, suggested a modification to proposed section (5) to clarify that section (5) of the rule does not apply to carriers of last resort.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds that section (5) of the rule should not apply to customers transferred to the carrier of last resort under the Commission's snap-back rule, 4 CSR 240-32.120, and will change the rule accordingly.

4 CSR 240-33.160 Customer Proprietary Network Information

(1) Definitions. For the purposes of 4 CSR 240-33.160, the following definitions are applicable:

(C) Categories of service include local exchange telecommunications services and interexchange telecommunications services.

(D) Communications-related services are telecommunications services, information services typically provided by telecommunications companies, and services related to the provision or maintenance of customer premises equipment.

(E) Control (including the terms "controlling," "controlled by," and "common control") is the possession, directly or indirectly, of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one (1) or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one or more other entities, whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. The commission shall presume that the beneficial ownership of ten percent (10%) or more of voting securities or partnership interest of an entity constitutes control for purposes of this rule.

(F) Customer is a person or entity to which the telecommunications company is currently providing service.

(G) Customer proprietary network information (CPNI) is information that relates to the quantity, technical configuration, type, destination, location and amount of use of a telecommunications service subscribed to by any customer of a telecommunications company, and that is made available to the telecommunications company by the customer solely by virtue of the customer-telecommunications company relationship. Customer proprietary network information also is information contained in bills pertaining to basic local exchange telecommunications service or interexchange telecommunications service received by a customer of a telecommunications company. Customer proprietary network information does not include subscriber list information.

(H) Customer premises equipment (CPE) is equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

(I) Independent contractor is a third party who contracts with a telecommunications company for the provision of services to the telecommunications company, but who is not controlled by the telecommunications company.

(J) Information service is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(K) Information services typically provided by telecommunications companies are only those information services as defined in (J) that are typically provided by telecommunications companies, such as Internet access or voice mail services. Information services typically provided by telecommunications companies as used in this rule shall not include retail consumer services provided using Internet websites (such as travel reservation services or mortgage lending services), whether or not such services may otherwise be considered to be information services.

(L) Joint Venture Partner is a third party that agrees to share with a telecommunications company in the profits and losses of a business entity formed by the telecommunications company and the third party.

(M) Local exchange telecommunications company (LEC) is any company engaged in the provision of local exchange or exchange access telecommunications services.

(N) Opt-in approval is a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. This approval method requires that the telecommunications company obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the telecommunications company's request consistent with the requirements set forth in this rule.

(O) Opt-out approval is a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. Under this approval method, a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to object thereto within a thirty (30)-day minimum period of time after the customer is provided appropriate notification of the telecommunications company's request for consent consistent with these rules. A telecommunications company may, in its discretion, provide for a longer period. Telecommunications companies must notify customers as to the applicable waiting period for a response before approval is assumed.

(P) Party is a participant in, or an agent or designee acting on behalf of and for the benefit of a participant to a transaction in which an end-user's CPNI is sold, transferred, shared or otherwise disseminated.

(Q) Public Safety Answering Point (PSAP) is a communications location used by public safety agencies for answering emergency telephone service calls which originate in a given area. A PSAP may be designated as primary or secondary, which refers to the order in which calls are directed for answering. PSAPs may be located at police, fire or emergency medical service communications centers, or may be located in a specialized centralized communications center which handles all emergency communications for an area.

(R) Subscriber list information (SLI) is any information identifying the listed names of subscribers of a telecommunications company and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and that the telecommunications company or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(S) Telecommunications company is used as defined in section 386.020 RSMo 2000.

(T) Telecommunications service is used as defined in section 386.020 RSMo 2000.

(U) Third Party is a company not owned or controlled by or owning or controlling a telecommunications company. The third party usually operates outside the market in which a telecommunications company operates and does not provide communications-related services.

(2) Use of CPNI without customer approval.

(C) Approval not required for use of customer proprietary network information.

1. A telecommunications company may use, disclose, or permit access to CPNI, without customer approval, in its provision of inside wiring installation, maintenance, and repair services.

2. A telecommunications company may use CPNI, without customer approval, to market services such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features.

3. A telecommunications company may use, disclose, or permit access to CPNI to protect the rights or property of the telecommunications company, or to protect users of those services and other telecommunications companies from fraudulent, abusive, or unlawful use of, or subscription to, such services.

4. A telecommunications company may use, disclose, or permit access to customer information to Public Safety Answering Points (PSAPs) if the PSAP claims it needs the information to respond to an emergency. Information to be released shall be limited to subscriber list information as defined in 4 CSR 240-33.160(1)(R).

(3) Approval required for use of CPNI.

(A) Use of Opt-Out and Opt-In Approval Process

1. A telecommunications company may, subject to opt-out approval or opt-in approval, use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer. A telecommunications company may, subject to opt-out approval or opt-in approval, disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors. A telecommunications company may also permit such persons or entities to obtain access to such CPNI for such purposes. Any such disclosure to or access provided to agents, affiliates, joint venture partners and independent contractors shall be subject to the safeguards set forth in paragraph (3)(A)2 below. A telecommunications company may elect not to apply the safeguards set forth in paragraph (3)(A)2 below to its agents or affiliates, however, if the telecommunications company so elects, then it shall be held responsible if its agents or affiliates further use, allow access to, or disclose customer CPNI.

2. Agents/Affiliates/Joint Venture/Contractor Safeguards. A telecommunications company that discloses or provides access to CPNI to its agents, affiliates, joint venture partners or independent contractors shall enter into confidentiality agreements with those agents, affiliates, joint venture partners or independent contractors that comply with the following requirements. The confidentiality agreement shall:

A. Require that those agents, affiliates, joint venture partners or independent contractors use the CPNI only for the purpose of marketing or providing the communications-related services for which that CPNI has been provided;

B. Disallow the agents, affiliates, joint venture partners or independent contractors from using, allowing access to, or disclosing the CPNI to any other party, unless required to make such disclosure under force of law; and

C. Require that the agents, affiliates, joint venture partners and independent contractors have appropriate protections in place to ensure the ongoing confidentiality of customers' CPNI.

(4) Customer Notification Requirements.

(C) Content of Notice. Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose, or permit access to, the customer's CPNI.

1. The notification must state that the customer has a right, and the telecommunications company a duty, under federal and state law, to protect the confidentiality of CPNI.

2. The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.

3. The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes. However, companies may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.

4. The notification shall be comprehensible and shall not be misleading.

5. If written notification is provided, the notice must be clearly legible, use at least a 10-point font, and be placed in an area so as to be readily apparent to a customer.

6. If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

7. A telecommunications company may state in the notification that the customer's approval to use CPNI may enhance the telecommunications company's ability to offer products and services tailored to the customer's needs. The notification required under subsection (4)(C) shall be in a font size no smaller than such statement.

8. A telecommunications company also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.

9. A telecommunications company may not include in the notification any statement attempting to encourage a customer to freeze third party access to CPNI.

10. The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes to from that telecommunications company is valid until the customer affirmatively revokes or limits such approval or denial.

11. A telecommunications company's solicitation for approval must include a notification of a customer's CPNI rights. The CPNI rights must be in close proximity to the solicitation.

(5) Release of customer proprietary network information resulting from bankruptcy, cessation of operation, merger or transfer of assets.

(C) Any opt-in/opt-out authorizations the customers previously executed with the exiting carrier should be transferred to the new carrier automatically, thereby ensuring that customers maintain their privacy interests by protecting this information from disclosure and dissemination. If the exiting carrier does not transfer CPNI data to the new carrier, the company receiving the new customers shall send a new CPNI notice to the customers acquired from the exiting carrier.

(D) The provisions of this section do not apply to customers transferred to the carrier of last resort under the Commission's snap-back rule, 4 CSR 240-32.120.

(6) Safeguards required for use of customer proprietary network information.

(C) All telecommunications companies shall maintain a record, electronically or in some other manner, of their own, their agents', their affiliates', their joint venture partners', or their independent contractors' sales and marketing campaigns that use their customers' CPNI. All companies shall maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI. The record must include a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as a part of the campaign. Telecommunications companies shall retain these records for all current and former customers for a minimum of one (1) year.

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

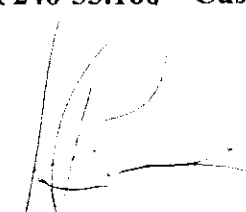
DATE: September 2, 2004

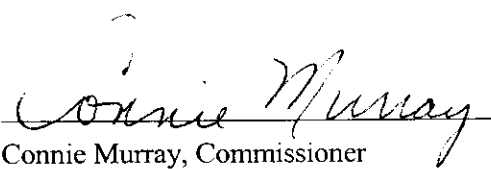
RE: Authorization to File the Final Order of Rulemaking with the Office of Secretary of State


CASE NO: TX-2003-0445

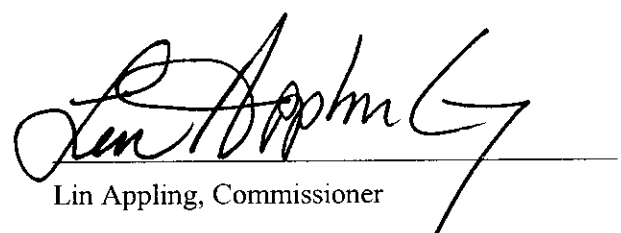
The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file the following Final Order of Rulemaking with the Office of Secretary of State, to wit:

4 CSR 240-33.160 – Customer Proprietary Network Information



Steve Gaw, Chair

Connie Murray, Commissioner

Robert Clayton, Commissioner

Lin Appling, Commissioner

Jeff Davis, Commissioner

(NO - It's redundant & unnecessary)



Matt Blunt
Secretary of State

Administrative Rules Division
Rulemaking Transmittal Receipt

Rule ID: 1701
Date Printed: 9/3/2004
Rule Number: 4 CSR 240-33.160
Rulemaking Type: Final Order Rule
Date Submitted to Administrative Rules Division: 9/3/2004
Date Submitted to Joint Committee on Administrative Rules:

Name of Person to Contact with questions concerning this rule:

Content: Marc Poston	Phone: 751-8701	Email: marc.poston@psc.mo.gov	Fax: 751-9285
RuleDataEntry: Lesli Belt	Phone: 751-7499	Email: marc.poston@psc.mo.gov	Fax: 751-9285

Included with Rulemaking:

Cover Letter

9/03/2004

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