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Arizona Corporation Commission
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MAY 17 2004

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IN THE MATTER OF DISSEMINATION OF
INDIVIDUAL CUSTOMER PROPRIETARY
NETWORK INFORMATION BY
TELECOMMUNICATIONS CARRIERS.

Docket No. RT-00000J-02-0066

COMMENTS OF THE RESIDENTIAL UTILITY CONSUMER OFFICE

INTRODUCTION

Every telecommunications company has a duty to protect the confidentiality of its customer's proprietary information. The Arizona Corporation Commission ("Commission") has been made aware at the public comment meetings held in this docket that the customers in this state are zealous about the confidentiality of their proprietary information. It should go without saying that customers strenuously object to the dissemination of their private information without their explicit approval. In fact, the legislature recognized the strong public policy of protecting consumer's proprietary information when it enacted into law A.R.S. § 40-202 which provides that a customer's private information shall be confidential unless specifically waived by the customer in writing. Congress also had an interest in regulating the disclosure of private information when it enacted the federal laws governing the privacy of customer information. 47 U.S.C. 222.

1 The Residential Utility Consumer Office ("RUCO") believes that the best way for this
2 Commission to recognize and encourage this strong public policy would be to adopt Staff's
3 Third Set of Rules¹ pertaining to disclosure of customer proprietary network information
4 ("CPNI") to affiliates that provide communications related services. Staff's Third Set of
5 Rules, like the FCC's Rules, provides for the opt-out procedure to access a consumer's
6 CPNI. For non-affiliate and affiliate with non-communication services, RUCO recommends
7 that the Commission adopt Staff's First Set of Rules, which provides for the opt-in
8 procedure. Staff's First Set of Rules also requires telecommunication companies to obtain
9 customer approval to disseminate CPNI by one of the following three means: electronic,
10 written or oral with third party verification. While RUCO agrees with the written or oral
11 verification, RUCO recommends that the electronic verification be allowed where access to
12 the web address can only be obtained from information in the mailed notice sent to
13 consumers pursuant to the notice requirements of the Rules².

14 15 **STAFF'S PROPOSED CPNI RULES**

16 Staff's three sets of proposed Rules address the dissemination of CPNI to a
17 telecommunication carrier's affiliates for telecommunication and non-telecommunication
18 services, and to non-affiliates. The Rules are complicated and difficult to comprehend so
19 RUCO has created a chart which RUCO believes summarizes the three sets of Rules
20 proposed by Staff (RUCO's chart is attached hereto as Exhibit One). The most restrictive
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23 ¹ Staff has proposed three sets of Rules ("Staff's First Set of Rules, Staff's Second Set of Rules, and Staff's
24 Third Set of Rules").

² RUCO's comments are not intended to debate the tenth circuit's ruling in *U.S. West, Inc. v. FCC*, 182 F.3d
1224 (10th Cir. 1999). While RUCO does not agree with the majority ruling in that decision, RUCO's
comments are strictly confined to an analysis of the three sets of Staff's proposed Rules.

1 proposal, Staff's First Set, mandates an "opt-in" mechanism to gain authorization for the
2 dissemination of CPNI to a non-affiliate as well as an affiliate for communication and non-
3 communication services. The opt-in approach described in Staff's First Set of Rules
4 prohibits the dissemination of CPNI in the absence of a consumer's written, electronic or
5 oral consent verified by a third party.

6 Staff's Second Set of proposed Rules distinguishes two types of CPNI and how
7 approval can be obtained for their dissemination to affiliates for communication services.
8 Specifically, CPNI defined as "call detail"³ can only be disseminated after obtaining
9 approval through an opt-in mechanism. Customer approval must be in writing, electronic
10 or oral with third party verification. The Rules do not address other CPNI (CPNI that is not
11 call detail) which RUCO understands would be governed by the FCC Rules. In other
12 words, other CPNI would be subject to an opt-out mechanism. The "opt-out" mechanism
13 allows the telecommunication carrier to disseminate the other CPNI (CPNI that is not call
14 detail) unless, after receiving written notice, the customer objects to the dissemination of
15 the information. Implicit in the opt-out approach is the customer's consent to disseminate
16 the information until such time as the customer affirmatively objects to the dissemination of
17 his/her private information. The opt-out approach shifts the onus to maintain the
18 customer's privacy from the Company to the customer to take affirmative action to prevent
19 disclosure.

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³ Call detail is defined as information that includes the specific nature of the call. For example, call detail information would include the name of the caller and the name of the person called.

1 Staff's Second Set does not address the dissemination of CPNI to an affiliate for
2 non-communication services.⁴ RUCO interprets this omission to mean that consent for
3 such disclosure would be obtained by an opt-in mechanism set forth in the FCC Rules.
4 The Rules do provide that dissemination of CPNI to non-affiliates shall be by written
5 customer opt-in approval. R14-2-xx08 (B).

6 The least restrictive set of Rules proposed by Staff is patterned after the FCC
7 Rules. Staff's Third Set of Rules provides that telecommunication companies shall comply
8 with the FCC Rules when disseminating CPNI to an affiliate. The FCC Rules provide that
9 a telecommunication carrier, may, subject to opt-out approval, disseminate CPNI to an
10 affiliate. 47 CFR §64.2007(b). Staff's Third Set of Rules also increases the notice
11 requirements. Dissemination of CPNI to affiliates that do not provide telecommunication
12 services and non-affiliates, like the FCC Rules, are subject to the opt-in mechanism. Opt-
13 in approval can either be oral, written or electronic.

14 In order to determine which of the three proposals to adopt, RUCO believes a
15 balancing analysis is required. On the one hand, telecommunication providers should be
16 able to foster competition by disseminating CPNI to their "affiliates."⁵ On the other hand,
17 consumers have a right to privacy, and the onus of maintaining that privacy as a general
18 rule should not fall on the consumer. It is reasonable, however, to assume that when a
19 consumer signs up for telecommunication services, the consumer has given his consent
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21 ⁴ The heading of R14-2-xx08 does describe the dissemination of CPNI to affiliates that do not provide
22 telecommunications-related services. However, the Rules themselves do not address it. R14-2-xx08 (B)
23 addresses the dissemination of non-published "customer information" to affiliates. The Rules do not define
24 "customer information," and given the context, RUCO believes "customer information" is referring to
"subscriber list information."

⁵ Staff's Rules do not define "affiliate" but combines affiliate with "Joint Venture Partner and or Independent Contractor" in the headings throughout its three sets of proposed Rules. RUCO includes the same reference in its Comments when it refers to "affiliate."

1 for the telecommunication provider to disseminate that information to its corporate family.
2 For example, if a consumer signs up with Qwest for local and long distance service, it is
3 reasonable for a consumer to receive a marketing correspondence from Qwest wireless⁶
4 promoting its service. RUCO believes that this type of CPNI dissemination fosters
5 competition at very little risk of harm to the consumer. RUCO agrees with the FCC that
6 this type of CPNI dissemination should be governed by the least restrictive means, i.e. the
7 opt-out mechanism.

8 RUCO further believes that it is appropriate to require an opt-in mechanism to
9 govern the dissemination of CPNI to affiliates for non-communication purposes and to non-
10 affiliates. Here, the resulting potential harm to the uninformed consumer of the release of
11 his/her confidential information far outweighs the added administrative inconvenience and
12 cost to the telecommunication company of utilizing an opt-in approach. Moreover, the very
13 fact that the opt-out approach could result in harm to the uninformed and otherwise non-
14 consenting customer is contrary to the strong public policy of protecting consumer privacy.
15 The Commission should adopt the opt-in approach to govern the dissemination of CPNI
16 information to affiliates for non-communication purposes and to non-affiliates.

17 RUCO supports verification procedures for opt-in to include written verification or
18 oral with third party verification. However, RUCO urges caution regarding electronic
19 verification. Electronic verification creates the possibility of uninformed consent if a
20 telecommunication provider's website directs consumers to a page at which they grant
21 authorization to use CPNI, without the customer having received the required written
22 notice. Therefore, RUCO recommends that the Commission allow verification by
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24 ⁶ Assuming, of course, that Qwest disseminated the consumer information to its wireless affiliate.

1 electronic means only where access to the web address can only be obtained from
2 information in the mailed notice sent to consumers pursuant to the provisions of the Rule.

3 In sum, for CPNI disclosure to affiliates that provide communication services, RUCO
4 recommends that the Commission adopt Staff's Third Set of Rules which require the opt-
5 out mechanism. For non-affiliates and affiliates that provide non-communication services,
6 RUCO recommends that the Commission adopt Staff's First Set of Rules which uses the
7 opt-in mechanism and requires customer approval by electronic, written or oral (with third
8 party verification) means. The electronic verification, however, should be allowed where
9 access to the company's web address can only be obtained from information in the mailed
10 notice sent to consumers.

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12 **RUCO'S PROPOSED MODIFICATIONS TO STAFF'S DRAFT CPNI RULES**

13 Apart from RUCO's policy recommendations discussed above, RUCO offers the
14 following comments on Staff's three sets of proposed Rules. Because the issues
15 addressed may appear in more than one set of Rules, the Rule number identifies the
16 comments, with an indication to which of the three sets of Rules the comments apply.

- 17 1) Second Set - R14-2-xx02 (2) is numbered twice.
- 18 2) First, Second and Third Set - Comment to R14-2-xx02 (5) – there is no
19 corresponding Rule No. R14-2-xx05 (E).
- 20 3) First, Second and Third Set - Comment to R14-2-xx04 (A)(1)-the definition
21 should include a "plain English" explanation, perhaps an example to assist
22 customer understanding. Subsection (A)(8) could be incorporated into
23 subsection (A)(1).
- 24

- 1 4) First, Second and Third Set - R14-2-xx04 (A)(10) – Insert “by the customer”
2 at the end of the sentence. “State that any customer approval for use,
3 disclosure of, or access to CPNI may be revoked or limited at any time **by**
4 **the customer.**”
- 5 5) First Set – R14-2-xx05 (A)(2)- move to the body of section A – The
6 requirement of (A)(2) that customers receive a notice complying with R14-2-
7 xx04 should apply regardless of which method a customer can use to grant
8 approval. As currently drafted, (A)(2) is an alternative to (A)(1), (A)(3), and
9 (A)(4), but it should be a prerequisite to each of them.
- 10 6) First Set – R14-2-xx05 (A)(3) – Electronic verification should be allowed
11 where there is no link to the website from which such approval is given.
- 12 7) First Set – R14-2-xx05 (E) – The verification procedure described in this
13 section is not one of the acceptable verification methods discussed in R14-2-
14 xx05 (A).
- 15 8) First Set – R14-2-xx05 (G) – the term “sales transaction” is used for the first
16 time without previously being defined. RUCO is unaware of what sales
17 transaction this Rule is referring to.
- 18 9) Third Set – R14-2-xx05 (F) – the verification described in this section is not
19 authorized in R14-2-xx05 (A).
- 20 10) First Set – R14-2-xx05 (H) – Delete the term “must” in the first line after the
21 word approval and change the following word “bear” to “bears”. The Rule
22 would read:
- 23
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1 "H. A telecommunications company relying on "Opt-In" approval bears the
2 burden of demonstrating that such approval has been given in
3 compliance with this Section of these rules."

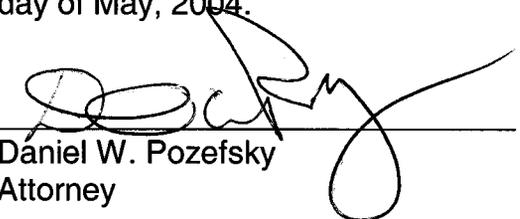
4 11) Second and Third Set - R14-2-xx06 (A) – the term "reasonable time" should
5 be defined – within a reasonable time from when?

6 12) First Set – R14-2-xx07 (B) and (C), Second and Third Set - R14-2-xx08 (B)
7 and (C) – the term "customer information" is not defined. Again, given the
8 context, RUCO believes that what the Rule is referring to is "subscriber list
9 information." If true, there is no need for either section. It would be
10 disingenuous to ask a customer to give approval to disseminate information
11 for which the consumer pays an additional charge to be non-published.

12 First Set - R14-2-xx07(C), Second and Third Set - R14-2-xx08 (B) and (C) –
13 last line delete "subscriber information" and insert "subscriber list
14 information."

15 13) Second and Third Set - R14-2-xx08 (B) and (C) – Heading – refers to
16 dissemination of CPNI to affiliates that do not provide telecommunication
17 related services – there is no corresponding rule which address CPNI
18 disseminated to affiliates that do not provide telecommunications services.

19
20 RESPECTFULLY SUBMITTED this 17th day of May, 2004.

21
22 
23 Daniel W. Pozefsky
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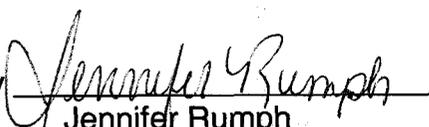
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By 
Jennifer Rumph
Legal Secretary

EXHIBIT

1

	A	B	C
	To "affiliate" for communications services	To "affiliate" for non-communications services	To non-affiliate
1	Staff #1 (most restrictive) Opt-in (oral w/ 3 rd party verification, written or electronic) (14-2-xx05)	Opt-in (oral w/ 3 rd party verification, written or electronic) (14-2-xx05)	Opt-in (oral w/ 3 rd party verification, written or electronic) (14-2-xx05)
2	Staff #2 Call detail Opt-in (oral w/ 3 rd party verification, written or electronic) (14-2-xx03.A and xx06.B)	other CPNI Not addressed-fall back to FCC rule (opt-in) not addressed-fall back to FCC rule (opt-in)	Opt-in (must be written) (14-2-xx08.A)
3	Staff #3 same as FCC (14-2-xx03.A) (but increased notice requirement in 14-2-xx04)	not addressed-fall back to FCC rule (opt-in)	Opt-in (must be written) (14-2-xx08.A)
4	FCC rules (least restrictive) Opt-out (64.2007b)	Opt-in (oral, written or electronic) (64.2007c)	Opt-in (oral, written or electronic) (64.2007c)