



BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner

Arizona Corporation Commission
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IN THE MATTER OF DISSEMINATION OF)
CUSTOMER PROPRIETARY NETWORK)
INFORMATION BY)
TELECOMMUNICATIONS CARRIERS)

Docket No. RT-00000J-02-0066

**COMMENTS OF MCI, INC. TO STAFF'S
SECOND DRAFT PROPOSED CPNI RULES**

MCI, Inc., on behalf of its regulated subsidiaries, ("MCI") submits these comments to Staff's Second Draft of Proposed Customer Proprietary Network Information ("CPNI") Rules.

INTRODUCTION

Staff's second draft is a significant improvement over the three initial proposals. The Staff has taken the right approach by using the framework of the federal CPNI rules. Nevertheless, some of the proposed requirements in the second draft will cause carriers to incur unnecessary costs that are unmatched by any other jurisdiction. MCI estimates that

1 it would cost nearly \$1 million to implement changes required to MCI's systems and
2 procedures in order to comply with these proposed rules. In addition, in the current
3 regulatory and economic environment, requiring telecommunications carriers to develop
4 business practices and system enhancements to address these state-specific rules will
5 necessarily have an impact on MCI's service quality and customer rates.
6

7 **SPECIFIC COMMENTS**

8 Section R14-2-xx03: The proposed rules must not confuse or eliminate the "total
9 service approach" or the other circumstances in the federal rules where opt-out/opt-in is
10 not warranted. MCI has inserted a new subsection A in the attached redlined version of
11 the Staff second draft with the language incorporating the total service section from the
12 federal rules. MCI also changed subsection D to remove the requirement to file all
13 executed proprietary agreements with the Office of the Secretary of State and the
14 Commission. MCI has added a provision making such agreements available upon request.
15 While MCI's agreements do contain a confidentiality provision, MCI does not believe that
16 the Secretary of State or the Commission truly want hundreds of contracts provided to
17 them, particularly with a presumed obligation on carriers to provide such proprietary
18 agreements on an on-going basis. It is doubtful that either the Secretary of State or the
19 Staff of the Commission will have the time and resources to review each agreement.
20 Moreover, the cost of compliance, as well as the need to implement internal policies to
21 ensure such agreements are collected, and then properly filed, will be burdensome and
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1 in the attached redlined version of the second draft in order to ensure the state's CPNI are
2 consistent with the federal CPNI rules.

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4 SUBMITTED this 30th day of August, 2004.

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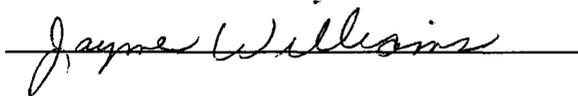
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Draft CPNI Rules

- R14-2-xx01 Application of The Rule
- R14-2-xx02 Definitions
- R14-2-xx03 Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Affiliates, Joint Venture Partners, and/or Independent Contractors Providing Communications-Related Services
- R14-2-xx04 Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Third Parties and Affiliates That Do Not Provide Communications-Related Services
- R14-2-xx05 Information Requirements for Customer CPNI Opt-In Notice
- R14-2-xx06 Additional Information Requirements for Customer Opt-Out Notice
- R14-2-xx07 Notification Requirements for Obtaining Customer Approval for Limited One-Time Use of CPNI for Inbound and Outbound Customer Telephone Contact
- R14-2-xx08 Verification of Customer Opt-Out Approval to Use CPNI
- R14-2-xx09 Confirming a Customer's Opt-In Approval
- R14-2-xx10 Reminders to Customers of Their Current CPNI Release Election
- R14-2-xx11 Duration of Customer Approval or Disapproval to Disseminate the Customer's CPNI
- R14-2-xx12 Severability

R14-2-xx01. Application of the Rule

These rules govern the treatment of Customer Proprietary Network Information (CPNI) for all telecommunications companies that provide telecommunications service in Arizona. In addition, the Commission adopts, incorporates, and approves as its own 47 CFR § 64.2001 through 2009, revised as of September 20, 2002 (and no future amendments), incorporated by reference, on file with the Office of the Secretary of State, and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975. These rules are in addition to the FCC rules and together with the FCC rules govern the release of CPNI in Arizona.

R14-2-xx02. Definitions

A For purposes of this Article, the following definitions apply unless the context otherwise requires:

- 1) "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.
- 2) "Communications-related services" means telecommunications services, information services typically provided by telecommunications carriers, and services related to the provision or maintenance of customer premises equipment.
- 3) A "Customer" of a telecommunications carrier is a person or entity to which the telecommunications carrier is currently providing service.
- 4) "Customer premise equipment" means equipment employed on the premises of a person (other than a telecommunications carrier) to originate, route, or terminate telecommunications.
- 5) "Customer proprietary network information (CPNI)" means 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 carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information. See 47 U.S.C. § 222(h)(1) revised 1999 (and no future amendments), incorporated by reference, on file with the Office of the Secretary of State, and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.
- 6) "Non-listed Service" means a service that ensures that customers' telephone numbers are not published in the telephone directory but are available through directory assistance.

- 7) "Non-published Service" means a service that ensures that customers' telephone numbers are not published in the telephone directory and are not otherwise available through directory assistance.
- 8) "Opt-In approval" means a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI that requires that the telecommunications carrier obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided notification of the carrier's request in conformance with section R14-2-xx05.
- 9) "Opt-Out approval" means a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI where a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to affirmatively object to approval within the 30-day waiting period provided in R14-2-xx03(C) after the customer is provided the notice as required in R14-2-xx06, subject to the requirements of section R14-2-xx08.
- 10) "Published" means authorized for voluntary disclosure by the individual identified in the listing.
- 11) "Subscriber list information" means any information identifying the listed names of subscribers of a telecommunications carrier 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 carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format. See 47 U.S.C. § 222(e)(1) revised 1999 (and no future amendments), incorporated by reference, on file with the Office of the Secretary of State, and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.
- 12) "Telecommunications carrier" means a public service corporation, as defined in the Arizona Constitution, Article 15, § 2, which provides telecommunications services within the state of Arizona and over which the Commission has jurisdiction.
- 13) "Third Party" means a person who is not the customer, the customer's telecommunications service provider, an affiliate, joint venture partner, or independent contractor of the customer's telecommunications service provider.

R14-2-xx03. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Affiliates, Joint Venture Partners and/or Independent Contractors Providing Communications-Related Services

A. A telecommunications carrier may use, disclose or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service (i.e. local, interexchange) to which the customer already subscribes from the same carrier, without customer approval.

AB A telecommunications carrier may, subject to opt-out approval or opt-in approval:

1) Use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer.

~~1) Use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer;~~

2) 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;

3) Permit such persons or entities to obtain access to such CPNI for such purposes.

BC Any solicitation for customer approval must be accompanied by a notice to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI. For the purpose of obtaining opt-in approval, the notice must comply with the requirements of Section R14-2-xx05 of these rules. For the purpose of obtaining opt-out approval, the notice must comply with the requirements of Section R14-2-xx06 of these rules.

CD Telecommunications carriers must wait a 30-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose or permit access to CPNI. A telecommunications carrier may, in its discretion, provide for a longer period.

A The telecommunications carrier shall be required to execute a proprietary agreement that meets the minimum requirements set forth in 47 CFR § 64.2007(b)(2), revised as of September 20, 2002 (and no future amendments), incorporated by reference, ~~on file with the Office of the Secretary of State, and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975~~ with all affiliates, joint venture partners and independent contractors to maintain the confidentiality of the customers' CPNI. Carriers shall be required to provide copies of such agreements shall to the Secretary of State upon request.

R14-2-xx04. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Third Parties and Affiliates That Do Not Provide Communications-Related Services

A A telecommunications carrier may, subject to opt-in approval, use, disclose, or permit access to its customer's individually identifiable CPNI to affiliates that do not provide telecommunications-related services. Except for the use and disclosure of CPNI as stated in section R14-2-xx03 and in the FCC regulations, specifically 47 C.F.R. § 64.2005, or as otherwise provided in section 222 of the Communications Act of 1934, as amended, a telecommunications carrier may only use, disclose or permit access to its customer's individually identifiable CPNI subject to opt-in approval.

B A telecommunications carrier may, subject to express prior written request, use, disclose, or permit access to its customer's individually identifiable CPNI to any third party specifically identified by the customer.

~~BA~~ A telecommunications carrier may, subject to express prior written request, use, disclose, or permit access to its customer's individually identifiable CPNI to any third party specifically identified by the customer.

C Any solicitation for customer approval must be accompanied by a notice to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI. For the purpose of obtaining opt-in approval, the notice must comply with the requirements of Section R14-2-xx05 of these rules.

~~D~~ D The telecommunications carrier shall be required to execute a proprietary agreement that meets the minimum requirements set forth in 47 CFR § 64.2007(b)(2), revised as of September 20, 2002 (and no future amendments), incorporated by reference, ~~on file with the Office of the Secretary of State, and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975~~ with all affiliates, joint venture partners, independent contractors, third parties, and affiliates that do not provide communications-related services to maintain the confidentiality of the customers' CPNI. Carriers shall be required to provide copies of such agreements shall to the Secretary of State upon request.

~~D~~

E A telecommunications company relying on "Opt-In" approval must bear the burden of demonstrating that such approval has been given in compliance with sections R14-2-xx04 and R14-2-xx05 of these rules.

R14-2-xx05. Information Requirements for Customer CPNI Opt-In Notice

A A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods.

B The contents of any such notification must:

- 1) Include the definition of customer proprietary network information contained in 47 USC § 222(h)(1); 1999 amendment (and no future amendments), incorporated by reference, on file with the Office of the Secretary of State, and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975;
- 2) Be mailed separately from any inducements, advertising or promotional information. The notice shall not be included in the customer's bill;
- 3) Be clearly legible, in ~~twelve point or larger print~~ sufficiently large type.;
- 4) Be posted on the company's web site;
- 5) Inform customers that their name, address, and telephone number, if published in the telephone directory or associated with a customer who subscribes to non-listed service, is not private information and will not be withheld from telemarketers;
- 6) State that the customer has a right to direct the company not to use the customer's CPNI or limit the use, disclosure, and access to the customer's CPNI;
- 7) State that the telecommunications company has a duty to comply with the customer's limitations on use, disclosure of, and access to the information;

- 8) State that CPNI includes all information related to specific calls initiated or received by a customer;
- 9) Inform the customer that deciding not to approve the release of CPNI will not affect the provision of any services to which the customer subscribes;
- 10) State that any customer approval for use, disclosure of, or access to CPNI may be revoked or limited at any time; and
- 11) Be printed in both English and in Spanish for those customers who have indicated a preference to receive customer communications in Spanish.

R14-2-xx06 Additional Information Requirements for Customer Opt-Out Notice

- A A telecommunications carrier may provide notification to obtain opt-out approval through, written, or electronic methods, but not orally (except as provided in section R14-2-xx07).
- B The contents of any such notification must comply with section R14-2-xx05 and with the following requirements.
- 1) Telecommunications carriers must notify customers as to the applicable waiting period (minimum 30-days as provided in R14-2-xx03(C)) for a response before opt-out approval is assumed.
 - 2) The notice must include a disclaimer that an opt-out directive for customer proprietary network information does not prevent the company from making telephone solicitation or telemarketing calls to the customer and does not prevent the company from including the customer's listed name, address, and telephone number in lists sold, leased or provided to other firms. This disclaimer is not required if the company's practice is to exclude customers who opt-out of customer proprietary network information use from use or disclosure for telemarketing purposes.

R14-2-xx07. Notification Requirements for Obtaining Customer Approval for Limited One-Time Use of CPNI for Inbound and Outbound Customer Telephone Contact

A telecommunications carrier may use oral notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether telecommunications carriers use opt-out or opt-in approval based on the nature of the contact.

~~**R14-2-xx08. Verification of Customer Opt-Out Approval to Use CPNI**~~

- ~~A Verification of a customer's opt out approval must be obtained within 180 days. Verification of the customer's approval shall be obtained in accordance with the procedures set forth below.~~
- ~~B Verification of the customer's approval may be obtained through written, oral, or electronic methods. All verification methods shall be conducted in the same languages that were used in the initial notification and shall elicit at a minimum:~~
- ~~1) The identity of the customer;~~

- 2) Confirmation that the person responding to the verification request is authorized to make CPNI available to the telecommunications company;
- 3) Confirmation that the customer wants to make the CPNI release verification;
- 4) The telephone numbers for which CPNI information release is authorized; and
- 5) The types of service involved.

C Written verification obtained by a telecommunications carrier shall:

- 1) Be a separate document having the sole purpose of authorizing a telecommunications company to use the customer's CPNI in accordance with this article;
- 2) Be signed and dated by the customer authorizing the use of the customer's CPNI; and
- 3) Not be combined with any inducement.

D Electronic verification obtained by a telecommunications carrier shall:

- 1) Include electronically signed letters of authority;
- 2) Be a separate document having the sole purpose of authorizing a telecommunications company to use the customer's CPNI in accordance with this article; and
- 3) Not be combined with any inducement.

E Oral verification obtained by a telecommunications carrier shall:

- 1) Be recorded; and
- 2) Not be combined with any inducement.

G. If a telecommunications company fails to obtain verification within 180 days of obtaining a customer's opt out approval, the authorization to use, disclose, or permit access to that customer's CPNI is no longer valid. If verification from the customer is not received within 180 days as required, the company shall direct any entities (affiliates, joint venture partners, or independent contractors) to whom it has released CPNI to stop using the CPNI until such verification is obtained.

~~R14-2-xx09. Confirming a Customer's Opt-In Approval~~

~~A Each time a telecommunications company receives a customer's "Opt In" approval to allow the telecommunications company make CPNI available to itself, its affiliates, independent contractors or joint venture partners, the telecommunications company must confirm in writing the change in approval status to the customer within ten days.~~

~~B The written confirmation must be mailed or e-mailed to the customer.~~

~~C The confirmation must be separate from any other mail from the telecommunications company.~~

~~D The confirmation must clearly advise the customer of the effect of the customer's opt in choice and must provide a reasonable method to notify the telecommunications company, including a toll-free telephone number if the telecommunications company made an error in changing the customer's approval status.~~

~~R14-2-xx010. Reminders Notice to Customers of Their Current CPNI Release Election~~

~~A Opt-out~~

Telecommunications companies that have obtained use the opt-out or opt-in approval mechanism must provide notice to their customers every twelve months.

~~1)two years. In the case of opt-out approval, the notification must remind customers of their election to allow the company to:~~

~~a)Provide their information to its affiliates that provide communications related services to which services that customer does not already subscribe; and~~

~~b)Provide their information to its joint venture partners and independent contractors that provide communications related services.~~

~~2)In the case of opt-in approval, the notification must remind customers of their election to allow the company to:~~

~~a)Provide their information to its affiliates that provide communications related services to which services that customer does not already subscribe;~~

~~b)Provide their information to its joint venture partners and independent contractors that provide communications related services; and~~

~~e)Provide their information to its affiliates that provide non-communications related services.~~

~~3)In the case of express prior written opt-in approval, the notification must remind customers of their election to allow the company to:~~

~~a)Provide their information to its affiliates that provide communications related services to which services that customer does not already subscribe;~~

~~b)Provide their information to its joint venture partners and independent contractors that provide communications related services;~~

~~e)Provide their information to its affiliates that provide non-communications related services; and~~

~~d)Provide their information to specifically identified third parties as requested in writing by the customer.~~

~~B)The notice must not be mailed with any advertising or promotional information.~~

~~C)The notice shall not be included with the customer's bill. The contents of any such notification must comply with the requirements of R14-2-xx06.~~

R14-2-xx11. Duration of Customer Approval or Disapproval to Disseminate the Customer's CPNI

Any approval of the use of CPNI received by a telecommunications carrier will remain in effect until the customer revokes, modifies, or limits such approval.

R14-2-xx12 Severability

If any provision of this Article is found to be invalid, it shall be deemed severable from the remainder of this Article and the remaining provisions of this Article shall remain in full force and effect.