

OPEN MEETING ITEM
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MEMORANDUM

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TO: THE COMMISSION
FROM: Utilities Division
DATE: September 24, 2004
RE: In The Matter of Dissemination
of Customer Proprietary Network
Information by Telecommunications
Carriers
Docket No. RT-00000J-02-0066

AZ. CORP. COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission
DOCKETED

SEP 24 2004

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I. INTRODUCTION

The attached Proposed Rules are the culmination of two (2) years of investigation and work by the Staff, at the direction of the Commission, to develop rules to protect the dissemination by telecommunications carriers of the Customer Proprietary Network Information ("CPNI") of Arizona subscribers. The rules contain important safeguards beyond those adopted by the FCC, to ensure that customers are routinely informed of their rights with respect to CPNI and that the decision to release CPNI is both knowing and informed.

II. DISCUSSION

47 U.S.C. Section 222(c) (1), restricts a telecommunications carrier's ability, except as required by law or with the approval of the customer, to use, disclose or permit access to individually identifiable Customer Proprietary Network Information ("CPNI")¹ received by virtue of its provision of a telecommunications service, except in the provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories. CPNI includes such information as where, when and to whom a customer places a call, as well as the types of service offerings to which the customer subscribes and the extent to which the service is used.² CPNI does not include "subscriber list information" which is "information which (A) identifies the listed names of subscribers of a carrier and such subscribers telephone numbers, addresses, or primary advertising classifications, and (B) that the carrier or an

¹ CPNI is defined in Section 222(f) of the Federal Act as "(A) information that relates to the quantity, technical configuration, type, destination, 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 (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier..."

² *In the Matter of Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, 13 FCC Rcd at 8064, para. 2 ("Clarification Order").

affiliate has published, caused to be published, or accepted for publication in any directory format.”

The FCC, in its *Second Report and Order and Further Notice of Proposed Rulemaking (“First CPNI Order”)* released February 26, 1998³, adopted rules to implement 47 U.S.C. Section 222. US WEST COMMUNICATIONS COMPANY (“US WEST”) appealed the FCC’s *First CPNI Order* to the Tenth Circuit Court of Appeals on constitutional grounds.⁴ The Tenth Circuit vacated the FCC’s *First CPNI Order*, concluding that the FCC failed to adequately consider the constitutional ramifications of the regulations interpreting Section 222 and that the regulations violated the First Amendment.

In September, 2001, the FCC released its *Clarification Order and Second Further Notice of Proposed Rulemaking (“Clarification Order”)* in response to the Tenth Circuit Court of Appeal’s Decision, allowing carriers to use either an opt-in or opt-out approval mechanism.

Following issuance of the FCC Order, Qwest began using an opt-out approval mechanism. Shortly thereafter, customers began contacting the Commission with complaints regarding Qwest’s notice. Qwest provided an 800 number for customers to instruct the Company not to share their CPNI with affiliates. However, the Commission received many complaints from customers about their inability to reach Company representatives through the 800 number.

In response, on January 16, 2002, the Commission held a Special Open Meeting to address the outcry of consumer dissatisfaction concerning the confusing nature of Qwest’s notice and the Company’s apparent inability to devote sufficient staff to allow customers to “opt-out” of having their CPNI shared with affiliates and third parties.

At the Commissioners’ request, Staff opened a generic investigation and rulemaking docket.⁵ On January 28, 2002, the Commission issued Decision No. 64373 directing Staff to undertake an investigation of CPNI policies, notice and verification requirements and dissemination procedures.

To implement the Commission’s directives, Staff issued a notice to the telecommunications industry on February 15, 2002 requesting comment on a list of issues. Comments were received from AT&T Communications of the Mountain States, Inc. (“AT&T”), Sprint Communications (“Sprint”), Citizens Communication, (“Citizens”) Frontier Citizens and Navajo Communications, (“Frontier”), Valley Telephone Company and Copper Valley Telephone Company, Residential Utility Consumer Office, (“RUCO”) MCI/World Com Inc., (“WorldCom”) Qwest Corporation (“Qwest”) and Cox Arizona (“Cox”). Qwest filed reply comments on April 29, 2002.

³ *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications of 1934, as Amended*, CC Docket Nos. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking (rel. February 26, 1998).

⁴ *US WEST v. FCC*, 182 F.3d 1224 (10th Cir. 1999).

⁵ *In the Matter of Dissemination of Individual Customer Proprietary Network Information by Telecommunications Carriers*, RT-000001-02-0066.

Following the workshop, Staff submitted data requests to all parties. Responses to the data requests were received from Allegiance, AT&T, Cox, Frontier, Qwest, Sprint, Valley Telephone, and WorldCom.

On July 25, 2002, the FCC issued a *Third Report and Order* promulgating final CPNI rules.⁶

Staff submitted its report and recommendations on October 25, 2002. Based upon the comments and information gathered during its investigation, Staff recommended rules which required opt-in customer approval prior to use of customers' personal information.

In a subsequent decision, the Federal District Court for the Western District of Washington found that CPNI rules adopted by the Washington Utilities and Transportation Commission requiring opt-in customer approval for sharing of customer calling data among affiliates and with third parties were unconstitutional and violated the carriers' First Amendment rights.⁷

As a result of that decision, Staff reexamined its earlier findings, and on April 5, 2004, Staff issued a Memorandum and Staff's First Draft of Proposed CPNI Rules to all interested parties consisting of three different approaches to dissemination of customer CPNI. The first approach required opt-in for sharing of all CPNI and included a follow-up verification process. The second approach was based on a combination of opt-in and opt-out procedures and was based upon the Washington Utilities and Transportation Commission's proposed rules and included a verification process. The third approach was modeled after the current FCC rules and included a follow-up verification process. The deadline for Comments was May 17, 2004. Parties filing comments to the First Draft of Proposed Rules were: Arizona Local Exchange Carriers Association ("ALECA"), AT&T, Cox, Qwest, RUCO, Sprint, and WorldCom.

Staff reviewed the comments received on the three sets of rules and prepared a revised set of proposed rules based upon those comments. On August 13, 2004, Staff issued a Second Draft of Proposed CPNI Rules and requested comment from telecommunications carriers in Arizona including wireless service providers. The following parties filed comments on Staff's Second Draft CPNI Rules: RUCO, AT&T, T-Mobile, Verizon Wireless, Nextel Communications, WorldCom, Cox, Qwest, and Sprint.

Another workshop was held on September 2, 2004. Parties attending the workshop included: Cox, T-Mobile, Cricket, ALLTEL, Sprint, AT&T Wireless, XO Communications ("XO"), AT&T, RUCO, Qwest, Nextel, Copper Valley Telephone ("Copper Valley"), Midvale Telephone ("Midvale"), Valley Telephone Co-op ("Valley"), Verizon Wireless ("Verizon"), Frontier, Arizona Telephone Co. ("ATC"), Southwestern Telephone Company ("SWTC"), Valley Telephone Cooperative, MCI and ALECA. At the workshop, parties discussed their comments on the Second Draft CPNI Rules and recommended proposed revisions.

Staff once again considered all of the comments of the parties contained in their written filings and from their participation at the workshop, and made further revisions to

⁶ *In the Matter of Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-149, Third Report and Order and Third Further Notice of Proposed Rulemaking (Rel. July 25, 2002) ("Third Report and Order").

⁷ *Verizon Northwest, Inc. v. Washington Utilities and Transportation Commission*, 282 F.Supp.2d 1187 (August 25, 2003).

the rules. Staff also submitted discovery to the parties to obtain clarification of issues raised at the workshop.

The Proposed Rules protect the CPNI of Arizona consumers by requiring their approval through the use of opt-in where the information is to be shared with affiliates providing non-communications related services and third parties and opt-out where the information is to be shared with affiliates, agents, joint ventures or independent contractors marketing communications related services. A verification process is included when "opt-out" is used to ensure that the customer's consent is informed and knowing.

III. STAFF RECOMMENDATIONS

Staff recommends that the Commission issue a Notice of Proposed Rulemaking. Staff recommends that the Commission use the Proposed Rules attached as Exhibit A in its Notice of Proposed Rulemaking. A summary of the changes from the Staff Second Draft is attached as Exhibit B.

Staff further recommends that the Commission allow Staff to make any appropriate, non-substantive amendments to the Proposed Rules as are necessary for publication in the Arizona Administrative Register by the Secretary of State.

Staff also recommends that the Hearing Division schedule appropriate public comment sessions within the timeframes established in A.R.S. Sections 41-1022.D and 41-1023.D and that the Hearing Division arrange for publication of the times and places of the public comment sessions in the Arizona Administrative Register in accordance with Sections 2022.D and 1023.D.



Ernest G. Johnson
Utilities Division Director
EGJ:EC:MAS:daa

ORIGINATOR: ERIN CASPER

BEFORE THE ARIZONA CORPORATION COMMISSION

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MARC SPITZER
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

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

DOCKET NO. RT-00000J-02-0066
DECISION NO. _____
ORDER

Open Meeting
October 14, 2004
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. 47 U.S.C. Section 222(c) (1), restricts a telecommunications carrier's ability, except as required by law or with the approval of the customer, to use, disclose or permit access to individually identifiable Customer Proprietary Network Information ("CPNI")¹ received by virtue of its provision of a telecommunications service, except in the provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories. CPNI includes such information as where, when and to whom a customer places a call, as well as the types of service offerings to which the customer subscribes and the extent to which the service is used.² CPNI does not include

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DECISION NO. _____

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2 subscribers of a carrier and such subscribers telephone numbers, addresses, or primary advertising
3 classifications., and (B) that the carrier or an affiliate has published, caused to be published, or
4 accepted for publication in any directory format.”

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6 2. The FCC, in its *Second Report and Order and Further Notice of Proposed*
7 *Rulemaking (“First CPNI Order”)* released February 26, 1998³, adopted rules to implement 47
8 U.S.C. Section 222.

9 3. US WEST appealed the FCC’s *First CPNI Order* to the Tenth Circuit Court of
10 Appeals on constitutional grounds.⁴ The Tenth Circuit vacated the FCC’s *First CPNI Order*,
11 concluding that the FCC failed to adequately consider the constitutional ramifications of the
12 regulations interpreting Section 222 and that the regulations violated the First Amendment.

13 4. In September, 2001, the FCC released its *Clarification Order and Second Further*
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15 Appeal’s Decision, allowing carriers to use either an opt-in or opt-out approval mechanism.

16 5. Following issuance of the FCC Order, Qwest began using an opt-out approval
17 mechanism. Shortly thereafter, customers began contacting the Commission with complaints
18 regarding Qwest’s notice. Qwest provided an 800 number for customers to instruct the Company not
19 to share their CPNI with affiliates. However, the Commission received many complaints from
20 customers about their inability to reach Company representatives through the 800 number.

21 6. In response, on January 16, 2002, the Commission held a Special Open Meeting to
22 address the outcry of consumer dissatisfaction concerning the confusing nature of Qwest’s notice and
23 the Company’s apparent inability to devote sufficient staff to allow customers to “opt-out” of having
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26 *Carriers Use of Customer Proprietary Network Information and Other Customer Information;*
27 *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications of*
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12 ("Qwest") and Cox Arizona ("Cox"). Qwest filed reply comments on April 29, 2002.

13 9. Following the workshop, Staff submitted data requests to all parties. Responses to the
14 data requests were received from Allegiance, AT&T, Cox, Frontier, Qwest, Sprint, Valley Telephone,
15 and WorldCom.

16 10. On July 25, 2002, the FCC issued a *Third Report and Order* promulgating final CPNI
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19 comments and information gathered during its investigation, Staff recommended rules which required
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23 Commission requiring opt-in customer approval for sharing of customer calling data among affiliates
24 and with third parties were unconstitutional and violated the carriers' First Amendment rights.⁷

25 ⁵ *In the Matter of Dissemination of Individual Customer Proprietary Network Information by Telecommunications*
26 *Carriers*, RT-000001-02-0066.

27 ⁶ *In the Matter of Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer*
28 *Information*, CC Docket No. 96-149, Third Report and Order and Third Further Notice of Proposed Rulemaking (Rel.
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5 used a combination of opt-in and opt-out procedures and was based upon the Washington Utilities
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20 ("Midvale"), Valley Telephone Co-op ("Valley"), Verizon Wireless ("Verizon"), Frontier, Arizona
21 Telephone Co. ("ATC"), Southwestern Telephone Company ("SWTC"), Valley Telephone
22 Cooperative, MCI and ALECA. At the workshop, parties discussed their comments on the Second
23 Draft CPNI Rules and recommended proposed revisions.

24 16. Staff once again considered all of the comments of the parties contained in their
25 written filings and from their participation at the workshop, and made further revisions to the rules.
26 Staff also submitted discovery to the parties to obtain clarification of issues raised at the workshop.
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1 IT IS FURTHER ORDERED that all prior Orders of the Commission in this Docket shall
2 continue in effect until the Commission adopts final rules in this matter.

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4 **BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

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6 _____
CHAIRMAN COMMISSIONER COMMISSIONER

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8 _____
COMMISSIONER COMMISSIONER

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10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
11 Secretary of the Arizona Corporation Commission, have
12 hereunto, set my hand and caused the official seal of this
13 Commission to be affixed at the Capitol, in the City of Phoenix,
14 this _____ day of _____ 2002.

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14 _____
BRIAN C. McNEIL
15 Executive Secretary

16 DISSENT: _____

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Draft CPNI Rules

- R14-2-2101 Application of The Rule
- R14-2-2102 Definitions
- R14-2-2103 Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Affiliates, Joint Venture Partners, and/or Independent Contractors Providing Communications-Related Services
- R14-2-2104 Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Third Parties and Affiliates That Do Not Provide Communications-Related Services
- R14-2-2105 Information Requirements for Customer CPNI Opt-In Notice
- R14-2-2106 Additional Information Requirements for Customer Opt-Out Notice
- R14-2-2107 Notification Requirements for Obtaining Customer Approval for Limited One-Time Use of CPNI for Inbound and Outbound Customer Telephone Contact
- R14-2-2108 Verification of Customer Opt-Out Approval to Use CPNI
- R14-2-2109 Confirming a Customer's Opt-In Approval
- R14-2-2110 Reminders to Customers of Their Current CPNI Release Election
- R14-2-2111 Duration of Customer Approval or Disapproval to Disseminate the Customer's CPNI
- R14-2-2112 Severability

R14-2-2101. Application of the Rule

These rules govern the treatment of Customer Proprietary Network Information (CPNI) for all telecommunications carriers 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.

R14-2-2102. 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 R14-2-2105.
- 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 R14-2-2103(C) after the customer is provided the notice as required in R14-2-2106, subject to the requirements of section R14-2-2108.
- 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.

R14-2-2103. 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, subject to opt-out approval or opt-in approval:
- 1) 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;
 - 2) Permit such persons or entities to obtain access to such CPNI for such purposes.

- B 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 R14-2-2105 of these rules. For the purpose of obtaining opt-out approval, the notice must comply with the requirements of Section R14-2-2106 of these rules.
- C 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.
- D The telecommunications carrier shall be required to execute a proprietary agreement with all affiliates, joint venture partners, independent contractors that provide communications-related services, third parties, and affiliates that do not provide communications-related services to maintain the confidentiality of the customers' CPNI. The proprietary agreement must meet 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.

R14-2-2104. 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.
- B A telecommunications carrier may use, disclose, or permit access to its customer's individually identifiable CPNI to a third party only upon written, electronic, or oral request by the customer that specifically identifies the third party to whom the CPNI may be disseminated.
- 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 R14-2-2105 of these rules.
- D The telecommunications carrier shall be required to execute a proprietary agreement with all affiliates, joint venture partners, independent contractors that provide communications-related services, third parties, and affiliates that do not provide communications-related services to maintain the confidentiality of the customers' CPNI. The proprietary agreement must meet 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.

- 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 R14-2-2104 and R14-2-2105 of these rules.
- F This article does not prohibit the use and disclosure of CPNI for the purpose of sharing customer records necessary for the provisioning of service by a competitive carrier as provided in section 222(c)(1) of the Communications Act of 1934, as amended (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.

R14-2-2105. 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. 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) 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;
 - 3) State that the telecommunications company has a duty to comply with the customer's limitations on use, disclosure of, and access to the information;
 - 4) State that CPNI includes all information related to specific calls initiated or received by a customer;
 - 5) Inform the customer that CPNI does not include published information, whether listed or non-listed, such as their name, telephone number, and address, and is this information is not subject to the same limitations of use.
 - 6) 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;
 - 7) State that any customer approval for use, disclosure of, or access to CPNI may be revoked or limited at any time; and
 - 8) Be posted on the company's web site.
- B Written notice must:
 - 1) Be mailed separately or be included as an insert in a regular monthly bill within an envelope that clearly and boldly states that important privacy information is contained therein;
 - 2) Be clearly legible, in twelve-point or larger print;
 - 3) Be printed in both English and Spanish unless the customer has previously expressed a preferred language in which case the notice may be written in that language alone.
- C Electronic notice must:

- 1) Be e-mailed separately from any billing information, inducements, advertising, or promotional information;
- 2) Be clearly legible, in twelve-point or larger print;
- 3) Be printed in both English and Spanish unless the customer has previously expressed a preferred language in which case the notice may be written in that language alone.

R14-2-2106 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 R14-2-2107).
- B The contents of any such notification must comply with section R14-2-2105 and with the following requirements.
- 1) Telecommunications carriers must notify customers as to the applicable waiting period (minimum 30-days as provided in R14-2-2103(C)) for a response before opt-out approval is assumed.

R14-2-2107. 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.

R14-2-2108. Verification of Customer Opt-Out Approval to Use CPNI

- A Verification of a customer's opt-out approval must be obtained within one year. Verification of the customer's approval shall be obtained in accordance with the procedures set forth below. Carriers may request an extension of the verification time period subject to Commission approval.
- 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.
- F If a telecommunications company fails to obtain verification within one year 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 one year 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.
- G As a result of failure to obtain verification within one year, the company and any other entities (affiliates, joint-venture partners, or independent contractors) may not use, disclose, or permit access to that customer's CPNI until verification is obtained.
- H Carriers may request an extension of the verification time period subject to Commission approval.

R14-2-2109. 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 to 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.

R14-2-21010. Reminders to Customers of Their Current CPNI Release Election

- A Telecommunications companies that have obtained opt-out or opt-in approval must notify customers of their current election regarding the treatment of their CPNI every twelve months.
 - 1) 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
 - c Provide their information to its affiliates that provide non-communications-related services.
- 3) In the case of customer specified third party approval by written, oral, or electronic request, 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;
 - c 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.

R14-2-2111. 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.

R14-2-2112 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.

Changes to the 2nd Draft as a result of the September 2, 2004 CPNI Workshop:

1. **Eliminated Section R14-2-2103(A):** The proposed rules adopt the Total Service Approach by adopting 47 CFR § 64.2001-2009. However, because the proposed rules do not explicitly state the specific language that refers to the Total Service Approach, parties were concerned that section 2103(A) was in conflict with the Total Service Approach. Section 2103(A) has been eliminated to clarify the intent to adopt the Total Service Approach.
2. **Revised Section R14-2-2104(B):** Several comments indicated that this section was confusing. The section has been revised to clarify the intent to have more stringent requirements for dissemination of CPNI to 3rd parties. Section 2104(B) requires the customer to specifically identify the 3rd party with whom they wish to have their CPNI shared by oral, written, or electronic means. This is stronger than an opt-in approval which does not require the customer to specifically identify the party to whom their CPNI will be released in the case of affiliates that do not provide Communications-related services.
3. **Added Section R14-2-2104(F):** Federal law requires an ILEC to share CPNI with competitive carriers representing that they have authority to receive it. Section 2104(F) has been added to incorporate section 222(c)(1) of the Communications Act of 1934 to remain consistent with federal law.
4. **Eliminated Section R14-2-2105(B)(4):** ~~This section required carriers to notify customers that disallowing the use and dissemination of CPNI would not prohibit the carrier from releasing Customer List Information to telemarketers. Parties objected to this requirement on the basis that it refers only to CLI and not to CPNI.~~ **Revised wording:** Inform the customer that CPNI does not include published information, whether listed or non-listed, such as their name, telephone number, and address, and this information is not subject to the same limitations of use.
5. **Eliminated Section R14-2106(B)(2):** Parties objected to this requirement on the basis that it refers only to CLI and not to CPNI.
6. **Revised Section R14-2-2105(B)(2):** Parties objected to the requirement that written notice be mailed separately. This section has been revised to require that the notice be mailed separately OR included as an insert in a regular monthly bill within an envelope that clearly states that important privacy information is enclosed.
7. **Revised Section R14-2-2105(B)(11):** Parties objected to the requirement that written or electronic notice be printed in both English and Spanish. This section has been revised to require that the notice be printed in both English and Spanish unless the customer has already expressed a language preference to the carrier in which case the notice may be printed in that language only.
8. **Revised Section R14-2-2108:** The 2nd Draft required verification of a customer's opt-out approval within 180 days. This requirement has been revised to require verification within one year. In addition, carriers may request an extension of the verification time period subject to Commission approval.
9. **Added Section R14-2-2108(G):** ~~Disapproval to use, disclose, or permit access to a customer's CPNI as a result of failure to obtain verification must remain in effect until the customer revokes or limits such disapproval.~~ As a result of failure to obtain verification within one year, the company and any other entities (affiliates, joint-venture partners, or independent contractors) may not use, disclose, or permit access to that customer's CPNI until verification is obtained.

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