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IN THE MATTER OF DISSEMINATION OF
INDIVIDUAL CUSTOMER PROPRIETARY
NETWORK INFORMATION BY TELECOM-
MUNICATIONS CARRIERS

Docket No. RT-00000J-02-0066

**Cox Arizona Telcom's Comments
to Staff's Proposed CPNI Rules**

Cox Arizona Telcom, L.L.C. (Cox) submits its Comments on the Commission's proposed Customer Proprietary Network Information ("CPNI") rules adopted October 20, 2004. The rules as drafted continue to be flawed and an unnecessary additional layer of CPNI regulation. As stated in Cox's previous comments (which Cox incorporates herein), the rules as drafted have constitutional flaws may result in legal proceedings. In addition, the Federal CPNI rules adequately protect consumer CPNI and certainly guard against the CPNI notification problems created by Qwest almost three years ago. As the numerous statewide public comment sessions suggest, Arizona consumers do not have pressing concerns about CPNI protection and the Federal CPNI rules are working. Nothing in the record reveals any recent problems with CPNI protection, particularly as telecommunications companies comply with the Federal CPNI rules. The record simply does not support a need for separate Arizona CPNI rules. Indeed, additional Arizona CPNI rules will unnecessarily result in confusion to the customer and cause additional financial burdens to carriers.

The Proposed Arizona CPNI Rules are Unconstitutional.

The proposed CPNI rules still contain a provision that, in essence, adopts a delayed "opt-in" methodology for CPNI use where courts have ruled that an opt-out approach should be used.

1 Specifically, Rule 2108 specifies the actions that carriers must take with respect to verifying a
2 customer's opt-out choice within a one-year timeframe of sending an opt-out notice. If a carrier
3 does not receive the customer's verification within that year, carriers are precluded in using,
4 disclosing, or permitting access to that customer's CPNI. This approach is essentially an opt-in
5 methodology, which by its very nature is subject to challenge on a similar basis set forth in *US*
6 *West v. FCC*, 182F.3d. 1224 (10th Cir. 1999) and *Verizon Northwest, Inc. v. Showalter*, 282
7 F.Supp. 2d 1187 (W.D. Wash. 2003). As stated in Cox's exceptions to Staff's proposed Rules,
8 Cox believes the Commission should amend the rules by deleting Rules 2108, 2109 and 2110 as
9 this would reduce potential constitutional challenges to the rules.

10 **Federal CPNI Rules Protect Consumer CPNI**

11 Cox reiterates its position that the Federal rules effectively protect consumer CPNI and
12 foreclose the need for additional Arizona CPNI rules. Establishing separate Arizona CPNI rules
13 will create two different sets of criteria that may confuse consumers and will result in higher costs
14 to telecommunications carriers that must implement and keep track of two distinct sets of
15 regulations. As carriers try and maintain and implement two separate sets of CPNI rules, the costs
16 of such action will ultimately result in higher costs to consumers as carriers attempt to recover
17 such costs of the additional regulations. The additional proposed Arizona requirements do not
18 address any existing problems in the record concerning CPNI use that are not already addressed by
19 the protections provided by the Federal CPNI.

20 **ACC Should Focus on Notification Procedures**

21 As noted in the Commission's own Commission News press release dated October 20,
22 2004, the issue of CPNI came out of Qwest's handling of its notice to customers regarding their
23 opt-out policy. The public outcry from consumers was over the form and content of the Qwest
24 notice and also their lack of access to Qwest's representatives through their toll-free number in
25 order for them to opt-out of having their CPNI shared.

26 If the Commission feels CPNI rules need to be adopted – above and beyond the Federal
27 CPNI rules that the record suggests are working -- the focus of the Arizona CPNI rules should be

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1 on nothing more than the telecommunications carriers' notification procedures to its customers
2 regarding CPNI choice. Having carriers properly inform customers in their CPNI opt out notices
3 would resolve any lingering issues that seem to be at the heart of the public's outcry against Qwest
4 more than three years ago. The Commission could adopt rules governing proper notification
5 standards that are clear and easy for consumers to understand so that they can make informed
6 choices regarding their CPNI use. Other than the concern over notification, the record does not
7 reveal any problem with carriers sharing CPNI beyond what is allowed under the approved Federal
8 requirements. Indeed, the proposed rules would allow the same dissemination of CPNI
9 information using basically the same process as set forth in the Federal CPNI rules. Having this
10 proceeding focused on specific notification requirements could ameliorate certain constitutional
11 challenges while meeting the public desire that notification related to CPNI be clear, concise and
12 easy for them to decide whether they would like CPNI to be shared.

13 **Conclusion**

14 Cox strongly urges the Commission to re-focus its efforts in this rulemaking to establish
15 rules on notification requirements to consumers regarding CPNI use. The rules – as proposed –
16 are unnecessary to provide adequate protection of CPNI, unnecessarily burdensome to carriers and
17 subject to potential legal challenge. Focusing on clear and concise notification methods may
18 provide actual benefits to consumers and result in lower expenses to carriers to implement such
19 standards.

20 RESPECTFULLY SUBMITTED this 22nd day of December, 2004.

21 **COX ARIZONA TELCOM, L.L.C.**

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2 foregoing filed this 22nd day of December, 2004
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