

ORIGINAL



0000017720

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

JEFF HATCH-MILLER

Chairman

WILLIAM A. MUNDELL

Commissioner

MARC SPITZER

Commissioner

MIKE GLEASON

Commissioner

KRISTIN K. MAYES

Commissioner

2005 APR 25 A 11: 12

AZ CORP COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission

DOCKETED

APR 25 2005

DOCKETED BY	<i>KS</i>
-------------	-----------

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

DOCKET NO. RT-00000J-02-0066

**COMMENTS OF ARIZONA WIRELESS CARRIERS GROUP
ON STAFF'S NOTICE OF FILING**

The Arizona Wireless Carriers Group¹ ("Wireless Carriers Group") submits these Comments on Staff's Notice of Filing Responses to Arizona Wireless Carriers filed on April 13, 2005 (the "Notice"). The Notice attaches Commission Staff's responses to Arizona Wireless Carriers Group data requests that sought information on consumer complaints about CPNI. The Wireless Carriers Group does not object to the submission of the Notice, but submits these comments to clarify what the data request responses contain.

¹ For purposes of this proceeding, the Arizona Wireless Carriers Group consists of Verizon Wireless, Cingular Wireless, Nextel West Corp. d/b/a Nextel Communications, Sprint Spectrum L.P. (dba Sprint), Cricket Communications, Inc., ALLTEL Communications, and VoiceStream PCS III Corporation d/b/a/ T-Mobile.

First, the vast majority of the complaints attached to the Notice address general telemarketing issues, not misuse of CPNI.² Under federal law, CPNI does not include customer name, phone number or address. *See* 47 U.S.C. § 222(e); *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, 13 FCC Rcd 12390, 12395-96 (1998). Existing federal and state telemarketing laws and related do-not-call registries already address the consumer concerns about telemarketing. *See, e.g.*, 15 U.S.C. § 6101 *et seq.*; A.R.S. § 44-1282; *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order*, 18 FCC Rcd 14014 (2003); *Second Order on Reconsideration*, 20 FCC Rcd 3788 (2005); 47 C.F.R. 64.1200 *et seq.*

Second, the vast majority of the complaints attached to the Notice arose in 2002 and involved Qwest. Timing is relevant here because the Staff data request responses show that virtually no CPNI complaints have been brought to the Commission after the federal CPNI rules were implemented in mid-year 2002. Moreover, if the complaints arising from the Qwest CPNI letter to customers in late 2001 and early 2002 are eliminated, the Staff data request responses indicate that only one CPNI complaint has been brought to the Commission involving a specific carrier.

As the Wireless Carriers Group has repeatedly argued in its comments in this docket, where the Commission is proposing regulations that restrict speech, the Commission “bears the responsibility of building a record adequate to clearly articulate and justify the state interest” that it asserts justifies the proposed speech-restriction. *See U.S. West, Inc. v. FCC*, 182 F.3d 1224, 1234 (10th Cir. 1999). The information in the consumer complaints attached to the Notice does not meet that burden for the proposed CPNI rules. In fact, it supports the opposite conclusion.

² A summary of the consumer complaints is attached as Exhibit 1.

DATED this 25th day of April, 2005.

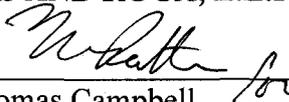
OSBORN MALEDON, P.A.

By 
Joan S. Burke
Daniel L. Kaplan
2929 North Central Avenue, Suite 2100
Phoenix, Arizona 85012
Attorneys for Cingular Wireless

ROSKA HEYMAN & DEWULF, P.L.C.

By 
Michael W. Patten
400 East Van Buren, Suite 800
Phoenix, Arizona 85004-2262
Attorneys for Cricket Communications, Inc.,
ALLTEL Communications and
VoiceStream PCS III Corporation d/b/a/
T-Mobile

LEWIS AND ROCA, L.L.P.

By 
Thomas Campbell
Michael T. Hallam
40 North Central Avenue
Phoenix, Arizona 85004-4429
Attorneys for Verizon Wireless

GALLAGHER & KENNEDY, P.A.

By 
Michael M. Grant
Todd C. Wiley
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Attorneys for Nextel West Corp. d/b/a Nextel
Communications

ISAACSON & DUFFY, P.C.

By 

Steve Duffy

3101 N Central Ave., Ste 740

Phoenix AZ 85012

602 274 2200

602 230 8487 (fax)

602 274 2373 (direct)

steveduffy@isaacsonduffy.com

Attorneys for Sprint Spectrum L.P. (dba
Sprint)

CERTIFICATE OF SERVICE

I certify that the original and thirteen copies of **COMMENTS OF ARIZONA WIRELESS CARRIERS GROUP ON STAFF'S NOTICE OF FILING** in Docket No. RT-00000J-02-0066 were hand delivered on April 25, 2005, to:

Arizona Corporation Commission
Utilities Division – Docket Control
1200 W. Washington Street
Phoenix, Arizona 85007

and a true and correct copy was hand delivered on April 25, 2005, to:

Maureen Scott Legal Division Arizona Corporation Commission 1200 W. Washington Street Phoenix, Arizona 85007	Ernest Johnson, Director Utilities Division Arizona Corporation Commission 1200 W. Washington Street Phoenix, Arizona 85007
Lyn Farmer, Chief Administrative Law Judge Arizona Corporation Commission 1200 W. Washington Street Phoenix, Arizona 85007	Christopher Kempley Legal Division Arizona Corporation Commission 1200 W. Washington Street Phoenix, Arizona 85007

and a true and correct copy was sent by U.S. Mail, postage prepaid, on April 25, 2005, to:

Michael W. Patten Roshka Heyman & DeWulf, PLC One Arizona Center 400 E. Van Buren Street, Ste. 800 Phoenix, AZ 85004	Michael M. Grant Todd C. Wiley 2575 E. Camelback Road Phoenix, AZ 85016-9225
Tom Campbell Michael Hallam Lewis and Roca 40 N. Central Avenue Phoenix, AZ 85004	Eric S. Heath Sprint Communications 100 Spear Street, Ste. 930 San Francisco, CA 94105-3114

<p>Jon Poston ACTS 6733 E. Dale Lane Cave Creek, AZ 85331-6561</p>	<p>Cindy Manheim, Senior Regulatory Cingular Wireless RTC-1 7277-164th Avenue NE Redmond, WA 98052</p>
<p>Scott Wakefield Daniel Pozefsky Residential Utility Consumer Office 1110 W. Washington Street, Ste. 220 Phoenix, AZ 85007</p>	<p>Jeffrey W. Crockett Snell & Wilmer LLP One Arizona Center Phoenix, AZ 85004-2202</p>
<p>Steven J. Duffy Isaacson & Duffy P.C. 3101 N. Central Avenue, Ste. 740 Phoenix, AZ 85012-2638</p>	<p>Curt Hutsell Citizens Communications 4 Triad Center, Ste. 200 Salt Lake City, UT 84180</p>
<p>Mark DiNunzio Cox Communications 1550 West Deer Valley Rd MS DV3-16, Bldg C Phoenix, Arizona 85027</p>	<p>Teresa Tan WorldCom, Inc. Department 9976 201 Spear Street, 9th Floor San Francisco, CA 94105</p>
<p>Gregory Kopta Davis Wright Tremaine 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101-1688</p>	<p>Letty Friesen AT&T Communications 1875 Lawrence Street, Ste. 1503 Denver, CO 80202</p>
<p>Thomas Dixon WorldCom, Inc. 707 17th Street, Suite 2900 Denver, CO 80404</p>	<p>Norm Curtright Maureen Arnold QWEST Communications, Inc. 4041 North Central Avenue, 11th Floor Phoenix, AZ 85012</p>
<p>Teresa Ono AT&T 795 Folsom Street, Room 2147 San Francisco, CA 94107-1243</p>	<p>Michael Bagley Director of Public Policy Verizon Wireless 15505 Sand Canyon Avenue Irvine, CA 92618</p>

<p>Senior Counsel Covad Communications Company 7901 Lowry Boulevard HQB02D84 Denver, CO 80230</p>	<p>Jacqueline Manogian Mike Hazel Mountain Telecommunications 1430 Broadway Road, Suite A200 Tempe, AZ 85282</p>
<p>Al Sterman Arizona Consumers Council 2849 East 8th Street Tucson, AZ 85716</p>	<p>Wendy Wheeler Vice President ALLTEL 11333 North Scottsdale Rd., Ste. 200 Scottsdale, AZ 85254</p>
<p>Teresa Reff Global Crossing Services 1080 Pittsford Victor Road Pittsford, NY 14534</p>	<p>Rex Knowles XO 111 East Broadway, Ste. 100 Salt Lake City, UT 84111</p>
<p>Nancy L. Davis General Counsel Verizon Wireless 15505 Sand Canyon Avenue Irvine, CA 92618</p>	<p>T-Mobile USA, Inc. Legal Department 12920 SE 38th Street Bellevue, WA 98006</p>
<p>Stephanie L. Boyett-Colgan Qwest Legal Department 1801 California Street, Suite 5100 Denver, CO 80202</p>	<p>Laurie Itkin Director, Government Affairs Leap Wireless/Cricket Communications 10307 Pacific Center Court San Diego, CA 92121</p>
<p>Western Wireless Corporation Legal Department 3650 131st Avenue SE, #600 Bellevue, WA 98006</p>	<p>Amanda Nix Western Wireless 2001 NW Sammamish Road Issaquah, WA 98027</p>
<p>Alltel Corporation Legal Department 11025 Anderson Drive Little Rock, AR 72212</p>	

Mary Spolito

EXHIBIT 1

Complaints Received by the ACC

	Date of Complaint	Date of ACC Completion	Carrier	Description of Complaint
1	1/15/02	1/15/02	Qwest Corp.	Customer objections to ACC permitting Qwest to provide names to any telemarketing firm or marketing company. Customer has received mail and telephone calls.
2	1/15/02	1/15/02	Qwest Corp.	Customer complaint regarding Qwest selling her name and number to telemarketers.
3	1/16/02	1/16/02	Qwest Corp.	Customer call to ACC to express opinion against Qwest privacy issues.
4	1/16/02	1/16/02	Qwest Corp.	Customer call to ACC complaining that he should not be responsible for having to opt out.
5	1/16/02	1/29/02	Qwest Corp.	Customer complaint regarding receiving calls from Qwest telemarketers after customer opted out.
6	1/23/02	1/30/02	Qwest Corp.	Customer complaint regarding receiving telemarketing calls after she opted out on 1/18/02.
7	1/24/02	1/24/02	Qwest Corp.	Customer complaint that he contacted Qwest to request that they keep his account information private, but Qwest would not provide a written verification.
8	5/20/02	7/3/02	Qwest Corp.	Customer complaint that Qwest sold information regarding the customer's second line to telemarketers.
9	6/20/02	6/20/02	Qwest Corp.	Customer complaint that he has been harassed by Qwest and their marketing. Customer was added to Qwest's telemarketing do not call list on 6/10/02.
10	11/29/02	12/2/02	MCI WorldCom	AT&T customer complained that he received calls from MCI about his call patterns.
11	2/21/03			Customer letter to ACC expressing concern about the possible sale of CPNI to telemarketers due to present amount of unwanted calls and junk mail.
12	2/28/03		N/A	Customer letter supporting ACC opposition to selling CPNI due to amount of telemarketing calls and door-to-door soliciting he receives.
13	3/4/2003	3/4/2003	N/A	Customer letter to the ACC to support the ACC opposition to selling CPNI. Customer disgusted with the amount of telemarketing calls he receives.
14	3/15/03		N/A	Customer e-mail to ACC noting that senior citizens are not afraid to fight to protect their financial and personal information from being sold to the highest bidder.