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BEFORE THE ARIZONA CORPORATION COMMISSION

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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, L.L.C.'s
Response to Staff's Late Filed Exhibit**

Cox Arizona Telcom, L.L.C. (Cox) hereby submits its Response to Staff's Late Filed Exhibit docketed March 17, 2005 as it pertains to Docket No. RT-00000J-02-0066 on Customer Proprietary Network Information ("CPNI").

Nothing in the record indicates that state specific CPNI rules, over and above the Federal rules, are needed. The current Federal CPNI rules more than adequately protect consumer privacy. Cox is unaware of any complaints regarding the release of its customer CPNI. This fact, coupled with the lack of consumer complaints at various public comment meetings throughout Arizona regarding improper use of CPNI and the lack of any actual CPNI complaints that were identified in the data request responses in this docket, further indicate that the Federal rules are working. Arguments that consumers may not understand or be "knowing" of their opt-out approval are unsubstantiated. If consumers were truly confused regarding a choice of opt-in or opt-out, they would certainly contact their provider to acquire more information.

Cox does not disagree with Staff that notification needs to be clear and understandable. Had Qwest's notification fulfilled that requirement, we would not be here today discussing proposed state CPNI rules. Up to that time, improper release of consumer's CPNI was not an issue. Since the Commission initiated this docket, improper release of consumers CPNI has still not been a problem. The public outcry more than two years ago was focused on Qwest's actual notification

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1 to its customers and Qwest's difficulties associated with managing the phone lines assigned to
2 receive the "opt-out" calls. However, since that time, the forms of notice and opt-out process used
3 by carriers in Arizona have not created similar problems, as revealed by the lack of CPNI
4 complaints and the lack of public comment on the issue at the numerous public comment sessions
5 held throughout the state. Again, the record in this docket simply does not support a need for
6 Arizona-specific CPNI rules that go beyond the established Federal rules. The proposed CPNI
7 rules are apparently intended to address a perceived, yet speculative need – not a significant and
8 current state interest based on an evidentiary record. As a result, the proposed CPNI rules –
9 particularly the de facto opt-in verification requirement -- are likely to run afoul of the First
10 Amendment. See *US West v. FCC*, 182F.3d. 1224 (10th Cir. 1999); *Verizon Northwest, Inc. v.*
11 *Showalter*, 282 F.Supp. 2d 1187 (W.D. Wash. 2003).

12 RESPECTFULLY SUBMITTED April 7, 2005.

13
14 **COX ARIZONA TELCOM, L.L.C.**

15 By 
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By Mary Ippolito