

EXCEPTION



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ORIGINAL OPEN MEETING AGENDA ITEM

BEFORE THE ARIZONA CORPORATION COMMISSION

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1 JEFF HATCH-MILLER
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 10 Commissioner

2005 NOV -3 P 2:41

AZ CORP COMMISSION
DOCUMENT CONTROL

11 IN THE MATTER OF) DOCKET NO. RT-00000J-02-0066
 12 DISSEMINATION OF INDIVIDUAL)
 13 CUSTOMER PROPRIETARY)
 14 NETWORK INFORMATION BY) CITIZENS' EXCEPTIONS ON THE
 15 TELECOMMUNICATIONS CARRIERS) RECOMMENDED CPNI RULES

16 On October 25, 2005, the Arizona Corporation Commission ("Commission") released
 17 the recommendation of Administrative Law Judge Teena Wolfe and Amy Bjelland in the form
 18 of Opinion and Order and allowed interested parties to file exceptions to the recommendation
 19 before 4:00 p.m. on or before November 3, 2005. The Citizens Arizona incumbent local
 20 exchange carriers ("Citizens")¹ hereby submit exceptions to the recommendation of the
 21 Administrative Law Judge to the Commission regarding the proposed rules regarding
 22 Customer Proprietary Network Information ("CPNI").

EXCEPTIONS

23 Citizens previously filed comments on the NPRM regarding the Commission's
 24 proposed CPNI rules on December 22, 2004 and hereby incorporates those comments by
 25 reference. Most of the issues raised by Citizens in its prior comments were not supported by
 26 Commission Staff and were not adopted in the Administrative Law Judge recommendation.
 27 Although the Commission's proposed CPNI Rules address some of the harms of earlier CPNI

28 ¹ Citizens' ILECs include Citizens Utilities Rural Company, Inc. (d/b/a Frontier Citizens Utilities Rural), Citizens
 Telecommunications Company of the White Mountains, Inc. (d/b/a Frontier Communications of the White
 Mountains) and Navajo Communications Company, Inc.

1 proposals, the proposed CPNI Rules contain many of the same problems and inconsistencies
2 previously identified by Citizens and other commentors.

3 The recommended CPNI Rules are still constitutionally suspect in that the rules
4 undermine protected commercial speech. Specifically, as a result of the mandatory opt-out
5 verifications included in the CPNI Rules, the opt-out requirements are effectively a
6 constitutionally impermissible opt-in requirement. In the context of CPNI restrictions, at least
7 two courts have determined that it is unconstitutional to require an affirmative customer opt-in
8 to receive truthful, non-misleading commercial speech. *U.S. WEST v. FCC*, 182 F.3d 1224
9 (10th Cir. 1999), cert denied, 530 U.S. 1213 (2000); *Verizon v. Showalter*, 282 F. Sup. 2d 1187
10 (W.D. Wash. 2003). In contrast to the Commission's methods, the FCC's opt-out
11 methodology is much more reasonable. The Commission should modify its CPNI Rules to
12 eliminate the verification requirements in R14-2-2108 and to rely instead on the FCC's opt-out
13 methodology.

14 The proposed CPNI Rules impose several significant constraints on the ability of
15 telecommunications carriers to effectively serve and communicate with their customers. Both
16 the opt-in and opt-out notification information contained in the CPNI Rules substantially
17 exceeds comparable requirements specified in the FCC's CPNI rules. Because the
18 Commission requirements are substantially different than the FCC's rules, the Proposed CPNI
19 Rules will significantly burden carriers doing business on an interstate basis. The FCC had
20 previously noted that it does "not take lightly the potential impact that varying state regulations
21 could have on carriers ability to operate on a multi-state or nationwide basis." July 2002 *CPNI*
22 *Order*, at ¶ 71. The Commission should eliminate the onerous notifications requirements
23 contained in R14-2-2104 and R14-2-2105.

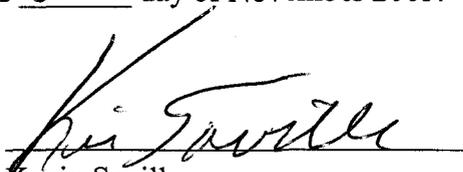
24 R14-2-2103(D) requires a carrier that intends to disclose CPNI to an affiliate, joint
25 venture partner or independent contractor to execute a "proprietary" agreement to maintain the
26 confidentiality of the customer's CPNI. The CPNI Rules also require carriers to file the
27 agreements with the Secretary of State and provide a copy to the Commission. The FCC rules
28 require a "confidentiality" agreement only when a carrier intends to disclose CPNI to a joint

1 venture partner or independent contractor that is marketing communications-related services
2 pursuant to opt-out approval. See 47 C.F.R. § 64.2007(b)(2). Unlike R14-2-2103(D), the FCC
3 does not require a confidentiality agreement between a carrier and an affiliate when the
4 affiliate is marketing communications-related services. In addition, the FCC's CPNI rules do
5 not require confidentiality agreements when a carrier discloses CPNI to an affiliate that does
6 not provide communications-related services. The Commission should either eliminate or
7 modify the requirements for proprietary agreements in the CPNI Rules.

8 CONCLUSION

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10 The Commission's proposed CPNI Rules impose several significant constraints on the
11 ability of telecommunications carriers to effectively serve and communicate with their
12 customers. The Commission should modify the CPNI Rules to comply with these
13 constitutional requirements and to either simplify or eliminate the other overly burdensome and
14 complex requirements in the CPNI Rules.

15
16 RESPECTFULLY SUBMITTED this 2 day of November 2005.

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18 
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