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ARIZONA CORPORATION COMMISSION

2002 JAN 30 P 4: 10

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AZ CORP COMMISSION  
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Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S. W.  
Washington, DC 20554

Arizona Corporation Commission  
**DOCKETED**

JAN 30 2002

Re: **Customer Proprietary Network Information and Other Customer Information - CC Docket No. 96-115**

DOCKETED BY *mac*

Dear Ms. Salas:

The Arizona Corporation Commission ("ACC" or "Arizona Commission") supports the adoption of an "opt-in" Customer Proprietary Network Information ("CPNI") requirement, which would require a Company to obtain express customer approval prior to the release of individually identifiable CPNI. Article II, Section 8 of the Arizona Constitution, contains an express right to privacy provision, which has been interpreted by Arizona Courts to afford citizens a more expansive protection of their privacy than is afforded by the Federal Constitution. In addition, Arizona Revised Statutes, Section 40-202 confirms the Arizona Commission's authority to adopt rules which require express customer approval prior to the dissemination of proprietary customer information.<sup>1</sup>

Recently, Qwest Corporation ("Qwest") sought to disseminate CPNI through use of an "opt-out" mechanism. Because of an overwhelming number of calls from consumers expressing confusion over Qwest's notice and "opt-out" CPNI dissemination policy, the Arizona Corporation Commission held a Special Open Meeting on January 16, 2002. The following serious concerns were raised at that meeting regarding Qwest's implementation of an "opt-out" program:

- 1) Qwest's notice was not bilingual and thus failed to contain adequate provisions for the large Spanish speaking population in Arizona. Thus, up to 25% of Qwest's Arizona consumers may not have been able to read the notice sent out by Qwest. In addition, no efforts were made by Qwest to provide access to bilingual operators.

<sup>1</sup> A.R.S. 40-202 provides that: "[i]n supervising and regulating public service corporation, the commission's authority is confirmed to adopt rules to: 5. Provide that, notwithstanding any other law, customer information, account information and related proprietary information are confidential unless specifically waived by the customer in writing."

2) Qwest's CPNI notice was combined with and followed a notice on implementation of a new area code, and thus some customers did not read enough to realize that they had a limited opportunity to "opt-out" of Qwest's plans to disseminate their CPNI within Qwest's "family of companies".

3) Qwest's notice was not written in a clear and concise manner for consumers to fully understand the ramifications of CPNI dissemination. It was not clear from the notice exactly what information would be shared and it was not clear from the notice with whom this information would be shared.

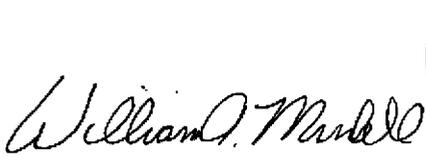
4) Qwest's staffing levels were insufficient to handle the number of calls from customers wanting to "opt-out". Qwest indicated at the Special Open Meeting that only a small percentage of its customers had chosen to opt-out (3-4%). It can be presumed, based upon the comments at the hearing, that both inadequate staffing levels and the confusing and multi-subject notice contributed to this low level of customer response.

5) Qwest's verification procedures were also called into question, with some customers stating that Qwest had made mistakes in recording their expressed desires for CPNI Release.

As a result of the very serious concerns expressed by consumers, the Arizona Commission has ordered Qwest to delay implementation of its CPNI "opt out" mechanism until the ACC has an opportunity to address adequate notice, verification and dissemination requirements through an expedited investigation and rulemaking proceeding. Given the strong state interest in consumer privacy, the Arizona Commission urges the FCC to re-adopt an "opt-in" CPNI dissemination policy. 47 U.S.C. Section 222 requires customer approval before the consumer's identifiable CPNI may be disseminated. The Arizona Commission believes that the term "approval" as used in 47 U.S.C. Section 222 connotes an informed and deliberate response. An "opt-out" requirement is insufficient in that it implies consent where consent would otherwise not be given in many cases. The recent experience in Arizona confirms the importance of privacy to consumers and the need for an informed waiver of privacy rights. Finally, given the strong state interest in consumer privacy requirements, the FCC should not prohibit states from adopting regulations which go beyond any requirements it may adopt at the national level.

The Arizona Commission appreciates the opportunity to participate in the FCC's proceeding on CPNI dissemination. The ACC looks forward to further participation particularly as it concludes its own state proceeding on this issue, which may assist the FCC in its re-examination of these very important issues.

Sincerely,



William A. Mundell  
Chairman



Jim Irvin  
Commissioner



Marc Spitzer  
Commissioner

cc: Michael K. Powell, Chairman  
Kathleen Q. Abernathy, Commissioner  
Michael J. Copps, Commissioner  
Kevin J. Martin, Commissioner