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ARIZONA CORPORATION COMMISSION

2002 FEB 15 P 1:36

February 15, 2002

AZ CORP COMMISSION  
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TO: Telecommunications Industry Members and Other Interested Parties

RE: CUSTOMER PROPRIETARY NETWORK INFORMATION (CPNI) PROCESS INVESTIGATION (DOCKET NO. RT-00000J-02-0066)

On January 28, 2002, the Arizona Corporation Commission ("Commission") issued Decision No. 64375 directing that an investigation be commenced on an expedited basis to examine and address the CPNI policies, notice and verification requirements of all telecommunications carriers providing service within the State of Arizona. The record from this investigation shall be used as the basis for the adoption, on an expedited basis, of rules or a Commission Order establishing appropriate guidelines for company notice, verification and CPNI dissemination requirements.

Decision No. 64375 also ordered that Qwest and other telecommunications carriers shall delay implementation of an "opt-out" CPNI policy in Arizona until the conclusion of this investigation and the issuance of rules and/or a Commission order which establish the requirements for customer notice, verification and other CPNI dissemination requirements.

As a result of the Commission's Order, Staff is soliciting comments from all interested parties on the questions attached as Exhibit A.

Based on the comments, Staff will formulate a recommendation to the Commission on company notice, verification and dissemination requirements. The Commission has set out the following timetable:

February 15, 2002	Staff publishes an issues list for comment by all interested Telecommunications Carriers
March 29, 2002	Written comments by interested parties
April 29, 2002	Written responsive comments by interested parties
May 15, 2002	Workshop/Meeting with all interested parties to discuss comments and respond to questions
June 15, 2002	Staff recommendation to Commission on Notice, Verification and Dissemination Requirements

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Please submit an original and ten copies of any comments to Docket Control no later than March 29, 2002, referencing Docket No. RT-00000J-02-0066. Thank you for your interest and participation in this important process.

To be placed on the formal service list in this docket, please notify, in writing, Rodica Pasula at the Phoenix address below. If such notification or comments are not received by March 29, 2002, you will not be placed on the formal service list and will no longer receive Commission mailings regarding this issue. If you have any questions, please feel free to contact Mr. Wilfred Shand at 602-542-0858.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. G. Johnson', followed by a long horizontal line extending to the right.

Ernest G. Johnson  
Director, Utilities Division

cc: Chairman William A. Mundell  
Commissioner Jim Irvin  
Commissioner Marc Spitzer  
Chris Kempley, Legal Division  
Maureen Scott, Legal Division  
Matt Rowell, Utilities Division

## ATTACHMENT A

### CPNI ISSUES LIST

1. The following questions relate to the adoption of an Opt-In policy for use of CPNI as opposed to an Opt-Out policy:
  - a. Does your company currently share CPNI with other affiliated entities? Does your company use an opt-in or opt-out policy for CPNI sharing? When did you implement this policy? Please provide a copy of the notice that your company sent to its Arizona customers. If you have used an opt-out policy, please provide any data you may have regarding the percentage of customers which opted out and identify the costs associated with administering an opt-out policy.
  - b. Prior to the Tenth Circuit Decision which vacated portions of the FCC rules, did your company share CPNI with other affiliated entities? Did your company use an opt-in policy as required by the FCC rules? Please provide any data you may have regarding the percentage of customers opting in and the costs associated with administering an opt-in policy.
  - c. Please identify any competitive concerns associated with the use of an opt-out versus an opt-in policy. If there are competitive concerns associated with an opt-out policy, please identify them with specificity and describe how any adverse competitive impacts would actually occur.
  - d. Is the "implied consent" assumed by an opt-out policy consistent with the language of Section 222 of the Federal Act? Please identify any harms associated with "implied consent" for release of individually identifiable CPNI collected by telecommunications carriers.
  - e. Do you agree with the Tenth Circuit's finding that communications between telecommunications carriers and their affiliates, divisions and employees constitute "commercial speech" for First Amendment purposes?
  - f. Does a consumer's privacy interest in CPNI rise to a level such that there is a substantial state interest in its protection? The Tenth Circuit identified a substantial state interest in protecting people from the disclosure of sensitive and potentially embarrassing personal information. Please identify any other substantial state interests involved?
  - g. Does the fact that the Arizona constitutional right to privacy has been interpreted more broadly than the Federal Constitution support the adoption of an opt-in policy in Arizona?

- h. Is an opt-out policy sufficient to protect the substantial state interests involved in protecting people from the disclosure of sensitive and potentially embarrassing personal information?
  - i. How would an opt-in policy alleviate concerns identified with the release of individually identifiable CPNI? Is an opt-in policy sufficiently narrowly tailored to overcome any First Amendment concerns or should the Commission consider a more flexible opt-in policy?
  - j. Does your company disclose CPNI to any non-affiliated companies? Under what circumstances would you release CPNI to a non-affiliated company?
  - k. Please comment on Arizona Revised Statutes Section 40-202(C)(5) and the importance of it with regard to any rules that the Commission adopts.
  - l. Would an opt-in policy result in additional benefits to consumers relative to an opt-out policy? Explain in detail why or why not.
  - m. Is the CPNI data collected by telecommunications companies different from the personal data collected by companies in other industries (e.g., banks)? If so, do those differences provide support for an opt-in policy as opposed to an opt-out policy? Explain in detail why or why not.
  - n. Would an opt-in policy result in any additional costs to telecommunications providers relative to an opt-out policy? Explain in detail what the source of the additional costs would be, if any.
  - o. What is the difference in customer response likely to be if an opt-in policy is used instead of an opt-out policy? Explain in detail the basis for your answer, citing any studies that support it.
  - p. Would an opt-in policy create any logistical or administrative problems for telecommunications companies relative to an opt-out policy? Explain in detail the basis for your answer.
2. The following questions relate to the content and format of the notice telecommunications companies provide to their customers regarding CPNI:
- a. Do the issues regarding such notice change substantially if an opt-in policy is used instead of an opt-out policy? Please explain in detail.
  - b. Should notice be provided in multiple languages? If so, what languages should the notice be provided in?
  - c. Should rules be adopted to regulate the form that such notice should take, e.g. should the notice be required to be on a separate page, should a specific font size

be required, etc.? If so, what should the requirements of such a rule be? Please explain and support your answer in detail.

- d. Should rules be adopted to regulate the content of such notice? If so what should be required? Please explain and support your answer in detail.
  - e. Should rules be adopted that standardize the title and labeling of such notice? If so what should be required? Please explain and support your answer in detail.
  - f. Is the CPNI data collected by telecommunications companies different from the personal data collected by companies in other industries (e.g., banks)? If so, do those differences provide support for imposing different noticing requirements for telecommunications companies than those faced by companies in other industries? Explain in detail why or why not.
3. The following questions relate to how often telecommunications companies should be required to provide notice of CPNI issues:
- a. For existing customers how often should telecommunications companies send notice of their CPNI policies if an opt-in system is used? If an opt-out system is used? Please explain your answer in detail.
  - b. For new customers when should telecommunications companies send notice of their CPNI policies if an opt-in system is used? If an opt-out system is used? Please explain your answer in detail.
  - c. For customers that are terminating service with a given company is any notice of CPNI policies necessary if an opt-in system is used? If an opt-out system is used? If so, explain in detail what is necessary and why it is necessary.
4. The following questions relate to the responsibilities telecommunications companies should have for CPNI data of former customers:
- a. If a customer terminates service with a given company should the company be obliged to destroy that customers CPNI data? Explain in detail why or why not.
  - b. If a customer terminates service with a given company should the company be permitted to use that customers CPNI data to market to that customer? That is, should companies be permitted to use CPNI data in win-back efforts? Explain in detail why or why not.
  - c. If a customer terminates service with a given company should the company be permitted to use that customers CPNI data for any purpose? Explain in detail what should and should not be allowed and why?

5. The following questions relate to the verification telecommunications companies provide to their customers that have opted -in or opted-out:
  - a. If an opt-out system is used, should companies be required to provide notice to their customers that they have successfully opted-out? Should companies be required to provide notice to their customers that they have not chosen to opt-out? Explain in detail why or why not.
  - b. If an opt-in system is used, should companies be required to provide notice to their customers that they have successfully opted-in? Should companies be required to (or allowed to) provide notice to their customers that they have not chosen to opt-in? Explain in detail why or why not.
  - c. For either an opt-in or opt-out system, should rules be adopted to govern the form of verification notices? If so, what should be required? For example, should verification be required to be in writing or telephonic verification acceptable? Explain and justify your answers in detail.
  - d. For either an opt-in or opt-out system, should rules be adopted to govern the content of verification notices? If so, what should be required? Explain and justify your answers in detail.
6. What obligations should telecommunications companies have regarding CPNI data for customers who have opted-out (or not opted-in)?
7. The following questions relate to the sharing of CPNI data with affiliates or non-affiliates:
  - a. Should there be restrictions placed on the entities that telecommunications companies can share CPNI data with? For example, should companies be permitted to sell CPNI data to outside entities or should the sharing of CPNI data be limited to affiliates? Does 47 U.S.C. Section 222 permit CPNI sharing with non-affiliates under any circumstances? Provide detailed justification for your answer.
  - b. If telecommunications companies profit from the sale of CPNI data should there be a requirement that they share those profits with the customers who have opted-in or not opted-out? For example, should such customers receive discounts?
  - c. Should there be any restrictions on how CPNI data is used by affiliates of telecommunications companies? If so, what are they and how could such requirements be enforced? Justify your answer in detail.
  - d. Should there be any restrictions on how CPNI data is used by non-affiliates of telecommunications companies? If so, what are they and how could such requirements be enforced? Justify your answer in detail.

8. Besides an all-inclusive opt-out or opt-in policy, is there merit to a partial opt-in policy? That is, is there merit to requiring an opt-in policy for some categories of customers but allowing an opt-out policy for other categories? Explain in detail why.