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JAMES G. JAYNE
Interim Executive Secretary

Phone No.: 602-542-3933
Fax No.: 602-542-5560
e-mail: mspitzer@cc.state.az.us

ARIZONA CORPORATION COMMISSION

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MEMORANDUM
AZ CORP COMMISSION
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TO: Christopher Kempley
Maureen Scott

FROM: Chairman Marc Spitzer *MS*

DATE: September 2, 2003

CC: Commissioner Irvin
Commissioner Mundell
Commissioner Hatch-Miller
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Arizona Corporation Commission
DOCKETED

SEP 02 2003

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RE: *Verizon Northwest, Inc. et al v. Showalter*
CPNI – Western District Court Order No. 02-CV-02343
ACC Docket Number: RT-00000J-02-0066

I have carefully reviewed the District Court Order in *Verizon Northwest, Inc. et al v. Showalter*. The good news is the Court found a substantial state interest in the protection of the privacy of its citizens.

The bad news is twofold. First, in its analysis of “narrow tailoring” the Court seems to view “opt-in” as *per se* overbroad. I have not read all of the cases cited in the Order, but I am not as optimistic as the Court that a “properly controlled” opt-out notice coupled with “a campaign to inform consumers of their rights” is adequate. The telecom companies view the Gramm-Leach Bliley notices (intended by the banks to be discarded with a less than 1% opt-out rate) as the model. Hopefully our factual record will establish that opt-out is illusory protection of privacy.

More troubling is the Court’s examination of the Washington rules as “directly and materially advancing state interest”. The Court focused on the “wireless gap” and noted, correctly, the rules were “underinclusive” and therefore unfair to wireline carriers. If the Arizona Attorney General is correct that our Commission’s authority over wireless carriers is nil, we fall into the same trap of underinclusivity as the Washington Commission.

Please feel free to comment.