

**COMMENTS OF AARP**  
**IN THE WUTC TELECOMMUNICATIONS CONSUMER BILL OF RIGHTS**  
**DOCKET NO. UT-990146**

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Rule-Making            )  
Proceeding Related to                        )  
Telecommunications Companies –            )  
Chapter 480-120 WAC                        )

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**INTRODUCTION**

AARP (formerly the American Association of Retired Persons) respectfully submits these comments for the Commission’s consideration and thanks the Commission for the opportunity to participate in this important rule-making docket. AARP is the nation’s leading organization for people age 50 and older. It serves their needs and interests through information, education, advocacy, and community services which are provided by a network of local chapters and experienced volunteers throughout the country. The organization also offers members a wide range of special benefits and services. AARP has over 750,000 members in Washington State. Many of these members are on fixed and/or low incomes.

For AARP’s membership, privacy is of considerable concern, and most do not believe that their personal information is being adequately protected.<sup>1</sup> Nearly everyone has received unsolicited communications about products or services, often because their name was bought, sold, or collected by merchants with whom they have conducted business. Personal data is routinely collected and shared with companies looking to increase their consumer base. Similar to the financial industry, telecommunications companies collect Social Security numbers, credit references, names of employers and sources of income, among other customer-specific information. They also know whether their customers subscribe to optional services, how much they spend each month for the services provided and what their payment history has been. Access to this information is valuable to these companies because it allows them to focus their marketing campaigns on those customers most likely to subscribe to new and optional services and to avoid less creditworthy customers who may not be considered as desirable in a more competitive market.

For these reasons, AARP strongly urges State policymakers to require telecommunications companies to protect customers' proprietary network information (CPNI) and usage, billing, payment and other personal information from disclosure unless the disclosure has been explicitly authorized by the customer. State policymakers should ensure that consumers have avenues for redress if their

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<sup>1</sup> See Testimony of AARP Witness William Iulo Before the Issue Forum on Privacy in Shoreline, Washington, submitted September 11, 2000.

personal information is inappropriately disclosed or used. We also believe that State policymakers should ensure that consumers have the right to correct the listing of their personal information if it is false or inaccurate.

### **WAC 480-120-202 through 216 Customer Proprietary Network Information (CPNI)**

The WUTC previously promulgated a set of CPNI rules. WAC 480-120-151 - 154. Those rules are now under review partly because of recent moves by some telephone companies to use customers' private account information for marketing purposes. While AARP supports strengthening the Commission's current rules, it is important to note that, according to the Washington State Attorney General's Office, the WUTC's CPNI rules have never been challenged before the agency or a court of law. Public Counsel has testified that, "unlike our federal constitution, the Washington state constitution has an express right of privacy. What is not debatable is the legal status of the commission's current CPNI rules. They are in effect and the commission should enforce them. No party has challenged the WUTC's rules, the agency has not vacated them, and they remain in effect today. Carriers operating in Washington must operate under 'Opt-in' or be in non-compliance with the WUTC's CPNI rules."<sup>2</sup>

AARP strongly supports the opt-in protection of customer "Call Detail" information, as proposed by the WUTC. However, AARP recommends that the Commission also adopt opt-in protection for other private account information, including marketing new versions of existing services, marketing telecom and telecom-related services, marketing non-telecom-related services, and disclosing information to affiliates of the company. More specifically, telecommunications companies should be required to obtain a consumer's explicit and recorded consent before selling or sharing any non-publicly available and personally identifiable information or records to third parties, as well as business affiliates.

Consumers should have the opportunity to determine whether their non-publicly available and personally identifiable information should be used or disclosed for purposes other than those for which the information was originally provided. The principle of informed consent should govern the disclosure or sharing of all other sensitive, non-publicly available and personally identifiable information. The commission should not consider silence (i.e., opt-out) to be approval by the consumer. We concur with the American Civil Liberties Union position that "opt-out unfairly places the burden on customers to prohibit unwanted sharing and use of their account information."<sup>3</sup> This issue is of major concern to our members. Older Americans are particularly targeted by fraudulent telemarketers, according to a 1996 AARP study on telemarketing.<sup>4</sup>

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<sup>2</sup> See Washington Attorney General Office of Public Counsel Comments to the WUTC, filed January 31, 2002, p. 4.

<sup>3</sup> See American Civil Liberties Union Comments to the WUTC, filed April 10, 2002, p. 1.

<sup>4</sup> See "Telemarketing Fraud Victimization of Older Americans: An AARP Survey," conducted by AARP, January, 1996.

In testimony before the Issue Forum on Privacy held September 11, 2000 in Shoreline, Washington, AARP witness William Iulo spoke before the committee chaired by Washington Representative Jay Inslee. At that time, Mr. Iulo presented the findings of another national AARP survey. In December of 1998, AARP sponsored an independently conducted national telephone sample survey of its membership regarding their views on privacy. Though the comments broadly addressed consumer privacy, we feel they are relevant to this proceeding. Results included the following:

- 78 percent of respondents disagreed, 56 percent disagreeing *strongly*, with the statement, “Current federal and state laws are strong enough to protect your personal privacy from businesses that collect information about customers.”
- 87 percent of respondents reported that it would bother them if personal information were sold by businesses, government agencies, or Web sites to other businesses.
- 81 percent of respondents opposed newly affiliated companies from being allowed to internally share personal and financial information about customers.
- Over two-fifths (42 percent) of respondents indicated that they “didn’t know” who they would turn to for assistance if a company were inappropriately sharing or selling their personal information.

It is clear from AARP’s survey that mid-life and older Americans feel vulnerable to the complex and fundamental changes that have occurred in this period of market transformation.

Thus, we agree with Public Counsel’s interpretation of 47 USC §222(h)(1)(A), which they believe vests the consumer with the right of control over his or her CPNI. According to Public Counsel, “under federal law CPNI is the customer’s property made available to the company (analogous to a bailment) solely for purposes of completing the call placed with the company. Any additional commercial use by the company is not within the implied consent the consumer has granted to the company for the use of CPNI. **Therefore, the only effective means for a consumer to "approve" of the use of their CPNI is through express consent, or "opt-in" approval for the use of CPNI** (emphasis added).”<sup>5</sup>

## CONCLUSION

AARP urges the Commission to adopt the recommendations presented above to safeguard the privacy of Washington telecommunications consumers. We also encourage the WUTC to continue to require carriers operating in Washington State to obtain their customer’s explicit "approval" via opt-in. CPNI is the customer’s personal information and the commission should consider it the customer’s property.

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<sup>5</sup> See Washington Attorney General Office of Public Counsel Comments to the WUTC, filed January 31, 2002, p. 1.

Thank you again for the opportunity to submit these comments.

Dated May 22, 2002

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Michael Karp  
Michael Karp & Associates, Inc.  
Consultant for AARP  
147 Appaloosa Road  
Bellingham, WA 98226  
Phone/Fax (360)724-5272  
Michael@awish.net