



SENIOR SERVICES
A nonprofit agency serving seniors

Carole Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
PO Box 47250
Olympia, WA 98504-7250

Re: Docket No. UT-990146 – Customer Information Rules

Dear Ms. Washburn:

We applaud the Washington Utilities and Transportation Commission's (WUTC) earlier efforts to strengthen rules related to customer privacy. We strongly believe in customers' right to control the use and distribution of personal information provided to telecommunications companies.

Opt-in not Opt-out

The most effective way to give customers control over the ownership and use of their personal information is to require an "opt-in" approach. We believe that the current proposed rules will be less effective than previous drafts at fully protecting customer privacy. Earlier drafts designated opt-in procedures for marketing a new category of service to customers and sharing information with related entities. We are disappointed, as will be consumers, to see the final version revert to "opt-out" in these circumstances.

Definition of CPNI

We have serious concerns about the WUTC expanded definition of CPNI in conjunction with the revised rules that allow an opt-out approach for private account information other than call detail.

The WUTC definition of CPNI differs in a substantive way from the other definitions used in the Telecommunications Act of 1996 and FCC rulemaking. The WUTC definition includes the added phrase "which includes information obtained by the company for the provision of the telecommunication service." We believe that this ambiguous phrase opens the door for a broad interpretation of the rules. For example "information obtained by the company for the provision of the telecommunication service" could include information that a company collected during the application process, such as credit history, or information collected during a complaint process or other company investigation. This rule could also be interpreted to include highly confidential medical information submitted by a customer in compliance with WAC 480-120-173 to avoid disconnection.

Unfair Burden on Customers

Customers have already strongly voiced their displeasure at "opt-out" rules. We know that most consumers agree that opt-out unfairly places the burden on customers to prohibit unwanted sharing and use of their account information. We also disagree, as do most consumers, that customers' private account information should be presumed as the company's property (the

presumption underlying opt-out). The opt-out ruling does not give customers the full and effective control of their information that they believe is their right. Seniors, people with disabilities, people with low English proficiency, and victims of domestic abuse are particularly dis-served by any opt-out approach.

Unnecessary Burden on the Public and State Agencies

We further believe that any opt-out approach will require an unnecessary burden placed on the public, the Commission, and Telecom companies (particularly the smaller companies) in a number of significant ways. The only way that an opt-out requirement is fair and just is if it is accompanied by a good faith, effective educational effort to consumers about the opt-out rule. The new explicit sections (WAC 480-120-208 and 209) outlining the minimum mechanism for allowing a customer to opt-out do not include sufficient assurances that customers will be informed of this critical option. Companies have little incentive to effectively educate customers about opting-out.

When Telecom companies fail to adequately inform customers, the burden falls upon the state agencies responsible for consumer protection. The consequences of failure to inform customers both advantages companies and disadvantages the public, the Commission and associated agencies. Many non-profit consumer service and advocacy groups, already hard pressed for resources, will be further burdened with consumer concerns and complaints.

Burden where it belongs: On Telecom Companies

Requiring an opt-in approach would eliminate objections raised by some smaller companies that providing a special toll-free number would be a burden.¹ Telecom companies themselves have argued to the FCC that there is no justification for requiring them to share customer information (with competitors) for marketing purposes because companies should not rely on customers' past patterns of use to market services, but should focus on the current needs of a customer as customer needs change quickly with the rapid introduction of new products and services.²

Privacy Rights

We agree with ACLU that "[a]n opt-in approach is consistent with the First Amendment and is the most effective way to ensure customers are fully informed about, and given control over, how their personal information is used."³ Consumers, especially in Washington, expect their government to protect their right to privacy to the fullest extent possible. Vulnerable populations in particular need this protection as confirmed by comments submitted on behalf of the Secretary of State.⁴

Washington State is a Proven Leader in Pro-Consumer Policymaking

The Washington Commission has been a leader in protecting customer privacy in the past. When Caller ID was introduced in the late 1980's, WUTC was one of the leaders in adopting the strongest possible state privacy regulations, requiring both per-call and per-line blocking capabilities. This strong stance lead to the almost universal adoption in all states of stronger privacy regulations, and the 1995 revision of the FCC policy on CLID.⁵

¹ WITA comments 5/17/02.

² Industry comments to FCC posted on WUTC website.

³ ACLU comments on 4/10/2002.

⁴ M. McKinney comments on 3/26/02.

⁵ Mukherjee and Samarajiva's 1996 article "Regulating 'Caller ID:' emulation and learning in US state-level telecommunication policy processes" in *Telecommunications Policy*, V.20.7.p531-542.

Learning from the Past

Customer complaints against telecommunications companies has topped the Washington Office of Attorney General's complaint list since 1997. One can not engage in a conversation with a member of the general public about telephone service without encountering informal complaints, and a high level of anxiety and frustration. Documented industry abuses are so widespread that we even have special terms to refer to the most common abuses: slamming and cramming. While smaller companies that practice such illegal acts can have their license revoked,⁶ larger companies continue to practice these abuses on customers with apparent immunity. Other documented abuses include profiling, illegal disconnections, and direct and indirect training or encouragement of employees to intentionally misinform (defraud) customers. Consumers clearly need their personal information protected by a comprehensive opt-in policy.

Commission Intent in Revising Rules

While it is a noble endeavor of the Commission to "change rules so that they require measurable results rather than prescribed inputs" and to eliminate or modify "existing rules with aspirational statements and input requirements."⁷ This approach will result in a substantial negative impact on consumers and the industry. Without clear statements of Commission intent, the industry will find a way to meet the letter of the law or accept the risk of penalties⁸ while never meeting the intent or spirit of the rulemaking. More effective than explicit minimum requirements in the privacy rules is a comprehensive opt-in policy.

Corporate Infrastructure

While corporations may have been granted the status of "individuals" in some legal context, it is clear from past and current behavior, that the Telecom industry lacks a human conscience. Corporations are rather complex "wooden boys" without the advantage of a Jimminy Cricket looking over a shoulder. The current ROC infrastructure and centralization as a business model for a public service utility may create temporary efficiencies of scale, it also has allowed these companies to dominate the marketplace, and has resulted in disastrous inefficiencies in customer service, and abuse of customer trust. Clearly an opt-in approach is the solution to protecting consumers right to privacy.

Strong Stance Needed

The Commission needs to take a strong stance on consumer privacy now. We urge the Commission to adopt a comprehensive opt-in policy. We request the Commission rewrite the definition of CPNI to eliminate any ambiguity in interpretation.

Sincerely,

Sandra Ripley
Program Manager
Senior Rights Assistance
Seattle Telecom Consortium

⁶ E.g., recent case against Webnet.

⁷ WUTC document on 3/27/02.

⁸ Industry informal statement at 10/18/01 workshop.