BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking – Chapter 480-120 Telecommunications Operations	) DOCKET NO. UT-990146) COMMENTS OF SPRINT) TIONS)

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COMMENTS OF SPRINT

Sprint Communications Company on behalf of Sprint Communications L.P. and United Telephone Company of the Northwest (Sprint) submits these written comments on CR-102 proposed rules regarding Customer Proprietary Network Information (CPNI) in response to the Washington Utility and Transportation Commission's (WUTC) Notice of Opportunity to Comment on Proposed Rules issued April 5, 2002.

Sprint appreciates the consideration the Commission has given to the industry's concerns in the latest proposed rules. Specifically, the Commission narrowed the definition of call detail. WAC 480-120-206 would now permit companies to use private account information, with the exception of call detail, to market telecommunications-related products and services and other products and services without prior customer approval as long as the company provides an annual opt-out notice. We also appreciate that the company may provide written notice in the customer's bill, and that the bill, or payment coupon, need not be used as a means for customers to communicate their desire to opt out. We are relieved to see the elimination of DSL as a separate category of service for purposes of determining related/unrelated services. And finally, we are pleased with the changes in the safeguard section (WAC 480-120-213) that relieve the officer of the company who signs the CPNI certificate from the obligation to attest that the company is in compliance with the requirements whether or not it is

true.

With these changes, several of Sprint's concerns outlined in comments filed March 26, 2002, have been addressed. Nevertheless, Sprint stands by its belief that the Commission should adopt the FCC's rules in their entirety for four reasons: First, so that the company's right to engage in commercial speech with its customers is not restricted; second, so companies are not required to modify existing systems and procedures to address unique state requirements that will be costly to companies operating in Washington, and ultimately to Washington ratepayers; third, to prevent customer confusion regarding customer and carrier rights and responsibilities between the federal and state jurisdictions; and fourth because a consistent approach will greatly ease the administration and enforcement of the policy. Sprint will not belabor its arguments in favor of a uniform national CPNI policy. However, there are several specific areas in which Sprint asks the Commission for further consideration.

WAC 480-120-201 Definition of "Call Detail"

Sprint would ask that the Washington rules mirror the FCC's rules. Alternatively, Sprint asks that the WUTC change the definition of call detail to give the Company more latitude in tailoring plans to specific customer needs. Sprint is pleased that the Commission has clarified that Call Detail includes "the aggregation of information up to the level where a specific individual is associated with information on calls made to a given area code, prefix, or complete telephone number, whether that information is expressed through amount spent, number of calls, or number of minutes used and whether that information is expressed in monthly, less-than monthly or greater-than-monthly units." Under this definition, it seems clear that a company could use aggregate information to determine if there might be demand for an optional toll calling plan, for instance, without obtaining prior customer consent.

However, it appears that under subsection (d), which states that call detail includes the monthly amount spent calling area code XXX, the company would be precluded from using finer details of the

aggregate data to develop a sales lead list of customers who stand to benefit from the plan, unless such customers "opted-in" to CPNI use. If this is the effect of the rule, then the company may decide it is not worth the expenditure required to mass market the plan. Conversely, if the company does mass market, more people are likely to receive a telemarketing call about a product they are not interested in than if the company were permitted to target market the plan to those most likely to have an interest. If this is not the Commission's intent, then the Commission could abandon the opt-in approach, or at a minimum, modify subsection (d) to add:

Specific customer names, addresses and phone numbers that are associated with aggregate data do not constitute call detail providing that the detail is not disaggregated and specifically identified by customer.

With this modification a programmer could create a sales lead list for marketing by asking for a listing of all customers who would benefit from the plan, without providing telemarketers with the specific detail for each customer.

WAC 480-120-207 Notice when use of private account information is permitted unless a customer directs otherwise ("opt out")

Again, Sprint asks that the WUTC rules match the FCC's. In the alternative, Sprint asks that (5)(a) be modified to read:

(a) A statement that the name, address, and telephone number, if published in the telephone directory, are not private information and *may be used by* telemarketers *even* if the customer opts-out;

The proposed rules state that the company will not withhold customer name, address and phone number from telemarketers. Sprint is not certain whether the Commission means the company's own telemarketers or all telemarketers. Sprint's concern is that the proposed wording might lead customers to believe that Sprint is somehow obligated to provide such information to businesses other than directory publishers, say vinyl siding or window shield glass repair telemarketers. Of course, to the extent directories become public information, nothing prevents any telemarketer from accessing such

information from the directory. The languge that Sprint suggests addresses the fact that both the phone company and other firms may use public information for telemarketing, without implying that the phone company is feeding such information directly to the entire universe of telemarketers.

WAC 480-120-206 Using private account information for marketing telecommunications related products and services and other products and services; and

WAC 480-120-209 Notice when explicit ("opt-in") approval is required and mechanisms for explicit approval.

The requirements in these two rules represent the greatest departure from the FCC rules. While less restrictive than the previous proposed rules, the new rules continue to impinge upon Sprint's constitutionally protected right to engage in Commercial Speech by requiring Sprint to seek out and obtain explicit approval, or "opt-in," from a customer before the Company may use CPNI to market new services to the customer. Sprint has fully articulated its legal arguments in comments filed March 26, 2002, and will not reiterate them here.

WAC 480-120-211 Confirming change in approval status

Sprint also asks the Commission to reconsider the requirement in 480-120-207 (e), 480-120-209(3)(n), 480-120-211, and 480-120-211 that the customer receive written confirmation within thirty days of the directive, and that the company provide written notice suggesting that the customer call the company if the confirmation is not received by this time. While this practice might be appropriate for emails, or written correspondence, it seems excessive for verbal correspondence. Company representatives receive various verbal directives from customers every day. The company does not provide written confirmation on every transaction. Doing so might provide some customers with greater assurance, but it would drive up the company's operating expenses, and ultimately customer rates, and it diverts resources from other customer-service activities.

Conclusion

Sprint appreciates the changes the Commission has made to the draft CPNI rules over previous

drafts. Nevertheless, Sprint continues to believe that a uniform, national CPNI policy will better address public interest concerns, lead to less customer confusion, and lessen administrative and enforcement costs than rules that vary between the state and federal jurisdiction. In additional, the draft rules continue to restrict targeted marketing that is commercial speech protected by the First Amendment. As explained in Sprint's comments filed March 26, 2002, the Commission's interest in protecting customers' privacy is not sufficiently well defined to determine whether it is substantial for purposes of review under the First Amendment. The Draft Rules are more extensive than necessary to satisfy the Commission's interest in protecting privacy.

Respectfully submitted this 22nd day of May, 2002, by

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