BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking – Chapter 480-120 Telecommunications Operations	)))))))	DOCKET NO. UT-990146 REPLY COMMENTS OF SPRINT ADDRESSING PROPOSED CPNI REGULATIONS

. . . . . .

COMMENTS OF SPRINT

Sprint Communications Company on behalf of Sprint Communications L.P. and United Telephone Company of the Northwest (Sprint) submits these reply 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 agrees with Verizon and Allegiance Telecom that the WUTC should adopt the FCC rules in their entirety. Sprint also agrees with AT&T and Allegiance Telecom that the WUTC should withhold action on revising its CPNI rules until the FCC's proceeding has concluded. A uniform national policy will result in less customer confusion, less administrative and enforcement costs, and will ensure that consumer's right to privacy is preserved without abridging companies' right to engage in commercial speech.

Verizon is correct that most of the controversy surrounding the issue of CPNI use revolves around the public fear that companies will share or sell personal information to non-affiliated third parties. Like Verizon, Sprint does not release such information unless required to do so by law or upon the express request of a customer, and has no intention of changing its policy even if the Commission were to adopt an opt-out approach.

Sprint also agrees with Verizon that the potential harms that have been cited by the media and other proponents of an opt-in approach are purely speculative. There has been no showing of specific harm that has resulted to Washington customers by telecommunications providers having abused CPNI. Indeed, Sprint has relied on an opt-out approach for two years and has yet to receive a single complaint. Verizon similarly testifies that it has shared CPNI among its business units, affiliates and authorized agents, pursuant to applicable laws, for years and has an unblemished record.

As to whether companies should be free to access customer information for their own marketing purposes, Sprint disagrees with Public Counsel's premise that customers have a reasonable expectation that businesses will not track customer purchases in order to market additional services that fit the customer's buying profile. Public Counsel compares the collection of customer information by telephone companies to grocery club card tracking systems or on-line transactions. The difference, Public Counsel asserts, is that customers can more easily avoid on-line transactions and club-card tracking. Yet nothing prevents any business from observing or collecting information concerning what individual customers purchase, in what quantities, and how often. Indeed such tracking is nothing more than good business practice. A business can not expect to prosper and grow if it cannot anticipate customer needs and supply sufficient inventory. For instance, a local building supplier may note that a particular customer comes in every Friday for a supply of lumber and thus may offer that customer a volume discount on a month's supply, or free-delivery every Friday on a standing order. It is hard to imagine the customer would be outraged either at the supplier's offer, or the fact the supplier observed the customer's purchasing habits and tried to anticipate the customer's needs.

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

Sprint's preference would be for the WUTC to adopt the FCC rules and definitions in its entirety, rather than deviate from those rules. If, however, the WUTC decides to deviate from the FCC rules, then Sprint agrees with WITA that the definition of call detail should be limited to subsection (a), or (d) and should be modified as suggested in Sprint's May 22 comments to permit companies to tailor plans that will benefit customers and market to those customers. Sprint also supports WITA's suggestion that (d) be cross-referenced with (a) so it is clear that the information referred to in (d) applies to individual subscriber usage.

WAC 480-120-203 Using a customer's call detail information

Sprint concurs with WITA that subsection (1) should contain a cross-reference to WAC 480-120-204, which allows certain use of private account detail without explicit "opt-in" approval.

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

Sprint seconds AT&T's contention that there is no need for an annual notice to customers who have already "opted-out" given that WAC 480-120-212 states that a customer's approval or disapproval will remain in effect until the customer "revokes, modifies, or limits such directive or approval." Verizon also notes that the annual opt-out notice is likely to lead customers to believe that they must reselect an option every year. Verizon is also correct that annual notification would increase operating costs in Washington with no appreciable benefit.

WAC 480-120-208 Mechanisms for opting out of use of private customer account information

Sprint agrees with WITA that providing both a box or blank on the notice for response as required in (c), and a postage-paid reply card as required in (d) is likely to create customer confusion for those customers who wish to "opt-out."

Sprint disagrees with Public Counsel's suggestion that the WUTC reinstate the proposed requirement that companies provide a means for customers to mark a box or blank on every payment coupon. Including an option on every payment coupon will confuse customers about whether they are required to reselect an option every month. From a practical standpoint, the administrative difficulties associated with this method of capturing information are staggering. Payment processing is a mechanized function. The payment coupon readers are not set up to count CPNI options. Consequently, every payment coupon would have to be manually sorted every month in order to find any that might be marked. Additionally, payment coupons are often separated from payments, or are not included. The Commission acted prudently when they removed this requirement and should not consider reinstatement.

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.

Sprint agrees with Verizon that the opt-in rule impinges on its constitutionally protected right to engage in commercial speech, and that there is no public policy need for an opt-in requirement. *See Supplemental Comments of Sprint, March 26, 2002*. Sprint is concerned by some commenters' characterizations of the level of protection afforded commercial speech by the First Amendment. For instance, the Electronic Privacy Information Center ("EPIC") would have the Commission measure the constitutionality of restrictions on the use of CPNI under an inexplicably permissive standard. EPIC erroneously contends that the CPNI rules need only

satisfy a 2-prong test, "that the government demonstrate a substantial interest in the speech regulation" and that the regulation is "narrowly tailored to achieve that interest." *Comments of EPIC at p. 1*. However, the Supreme Court adopted a 4-prong test to determine whether a regulation violated commercial speech rights. *See Central Hudson Gas & Electric, 447 U.S. 557, 100 S. Ct. 2343, 65 L. Ed. 2d 341 (1980)("Central Hudson")*.

The first prong is "whether the expression is protected by the First Amendment." *Central Hudson, 447 U.S. at 566, 100 S. Ct. at 2351, 65 L. Ed. 2d at 350*. The next question is whether the asserted governmental interest in restricting the speech is substantial. *Id*. If the answers to both questions are affirmative, it must be determined whether the restriction directly advances the governmental interest. *Id*. Last, a restriction on protected commercial speech cannot be sustained if it is "more extensive than is necessary to serve that interest." *Central Hudson, 447 U.S. at 566, 100 S. Ct. at 2351, 65 L. Ed. 2d at 350*.

It is EPIC's discussion of the fourth prong of the *Central Hudson* test that is of the greatest concern. EPIC contends that, after showing the regulation implicates a substantial government interest,[1] there need only be "ample evidence to demonstrate that an opt-out approach is insufficient to protect this interest." *Comments of EPIC at p. 2*. Rather, the question that the Commission must answer is whether "the governmental interest could be served as well by a more limited restriction on commercial speech," in which case "the excessive restrictions cannot survive." *Central Hudson, 447 U.S. at 564, 100 S. Ct. at 2351, 65 L. Ed. 2d at 349*.

[1] In footnote 2 of EPIC's comments, it incorrectly cites numerous federal court cases and statutes to support its argument that privacy is sufficient justification for requiring opt-in. However, those cases primarily involved the sharing of private information with third parties. Sprint concurs with EPIC that CPNI should be limited to the customer-carrier relationship and therefore does not disclose CPNI to unaffiliated parties. The risks addressed in the cases that EPIC cited simply do not exist in the case of CPNI.

EPIC argues without support that there is "substantial authority" to support the conclusion that an opt-out requirement cannot further a government interest in protecting privacy. *Comments of EPIC at p. 2*. To the contrary, the evidence in the record, and common sense, demonstrates that customers are capable and willing to opt-out. Moreover, the evidence in the record does not show that it is any more likely that CPNI fall into the hands of third parties under an opt-out requirement. Such a showing is required to satisfy the "least restrictive means prong" of *Central Hudson*. Therefore, the CPNI rules should include an opt-out rather than an opt-in requirement.

WAC 480-120-211 Confirming change in approval status

Sprint fully supports Verizon's and Allegiance Telecom's position that this requirement is unnecessary, and that it should be handled no differently than PIC freezes. Verbal confirmation should suffice unless specifically requested by the customer. Sprint also agrees with Verizon that there should be no waiting period for those who "opt-in." The waiting period is a safeguard for those who intend to act, but have not yet acted. There is no need for the safeguard once a customer has acted.

WAC 480-120-214 Disclosing customer proprietary network information

Sprint agrees with WITA that the draft rule is ambiguous regarding whether a customer may order the release of another customer's CPNI. WITA's suggestion to substitute the word "that" in place of "the" before the last two references to "customer" would clarify the rule.

Conclusion

Once again, Sprint urges the Commission to adopt the FCC rules and to delay any modifications to those rules until the FCC has completed its pending analysis. Since most of the

public concern has revolved around the fear that companies will release or sell CPNI to unaffiliated, third-parties the Commission should concentrate its efforts on that area and not prevent companies from using customer information as any good business would: to better understand and meet customer demand, and anticipate future needs.

Respectfully submitted this 12th day of June, 2002, by

_____

Nancy L. Judy
State Executive – External Affairs

_____

William E. Hendricks, Esq.
Attorney
WSBA No. 29786