

**BEFORE THE
WASHINGTON UTILITIES & TRANSPORTATION COMMISSION**

Telecommunications—Operations,)	
)	Docket No. UT-990146
Chapter 480-120 WAC)	

**REPLY COMMENTS OF VERIZON NORTHWEST INC.,
BELL ATLANTIC COMMUNICATIONS, INC. d/b/a VERIZON LONG DISTANCE
AND VERIZON SELECT SERVICES INC.**

Verizon Northwest Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance and Verizon Select Services Inc. (collectively "Verizon") submit these reply comments on the proposed Customer Information rules in Docket No. UT-990146, Chapter 480-120 WAC, Telecommunications – Operations.

INTRODUCTION

The Commission should defer consideration of unique state rules until the FCC has completed its current proceeding. The parties' recent rounds of comments¹ support the points made by Verizon in its May 22, 2002 comments:

- The proposed rules would be unlawful;
- There is no privacy emergency in Washington;
- CPNI is not being "sold" or otherwise illegitimately disclosed to third parties by Washington carriers;
- Carriers are making beneficial internal uses of CPNI to meet consumer needs and to communicate with customers;

¹ See Qwest's Supplemental Comments dated April 12, 2002 at pp. 3-6, 8-10; Comments of SPRINT dated May 22, 2002 at pp. 2-4; Comments of Allegiance Telecom of Washington, Inc. dated May 22, 2002 at pp. 1-4; AT&T's Comments dated May 22, 2002 at pp. 1-3. Even Public Counsel, who advocates unconstitutionally restrictive rules, acknowledges that the proposed rules would be confusing to customers: May 22, 2002 comments at p. 7.

- The proposed rules would cause customer confusion due to contradictions between Commission-mandated notices and the notices required by the FCC's rules;
- Many of the administrative portions of the proposed rules are unnecessary and would cause carriers to incur significant new costs to develop and administer multiple new processes; and
- The proposed rules would require companies to terminate many current marketing activities that benefit the public and that are lawful under federal statute and FCC regulations; and

In short, the public is not being harmed, there is no compelling reason to move forward at this time, and the proposed rules would be disruptive, confusing and counter productive.

CPNI IS A NATIONAL ISSUE AND IS BEST ADDRESSED ON A NATIONAL BASIS

A number of parties agreed that the proposed rules, if adopted, would be inconsistent with the FCC's CPNI rules and with Section 222 of the federal Telecommunications Act, and would also be unconstitutional.² In fact, *no* party has provided *any* legal analysis to show that the proposed rules are lawful. Washington is the only state that has proposed such rules,³ although nothing in the record suggests that consumer privacy concerns in Washington are any different from consumer privacy concerns in other states. Indeed, as pointed out by Public

² See Qwest's Supplemental Comments dated April 12, 2002 at pp. 2-7; Comments of SPRINT dated March 26, 2002 at pp. 13-18; Comments of Allegiance Telecom of Washington, Inc. dated May 22, 2002 at pp. 23 and Comments of Verizon Northwest, Inc., Bell Atlantic Communications d/b/a Verizon Long Distance and Verizon Select Services Inc. dated May 22, 2002 at pp. 1-2, 4-6 and 8-9.

³ In their Draft Decision released June 6, 2002 addressing consumer protection, Public Utilities Commission Of The State of California noted on pages 65 and 66 their intention to fashion rules that will be consistent with the FCC's regulations that are currently in effect, including the FCC's total service approach.

Counsel and others, the privacy issues raised by Staff and the Commission here have already been brought before the FCC.⁴

By including Section 222 in the Telecommunications Act of 1996, Congress made clear that CPNI is a national issue, and the FCC has developed national rules to reflect Section 222. Most parties involved in the Washington CPNI proceeding are also involved in the FCC proceeding, including EPIC and the National Association of AGs, and, as noted above, the same constitutional arguments are being raised in both proceedings.⁵ No party has suggested that the FCC is not the appropriate body to resolve these issues, and no party has suggested that the best interests of consumers would be served by having each state impose its own set of CPNI rules on top of the FCC's rules. Rather, all parties who commented on the issue of state-specific rules have recommended that the Commission wait until the FCC has completed its work for a variety of legal and public policy reasons, not the least of which is the confusion for consumers and carriers alike that will result.⁶

⁴See Public Counsel's May 22, 2002 comments at pp. 12-14; AT&T's Comments dated May 22, 2002 at p.1; Comments of SPRINT dated May 22, 2002 at p.2; Qwest's Supplemental Comments dated April 12, 2002 at p.10, and Comments of Washington Independent Telephone Association (WITA) dated May 17, 2002 at pp.2-4.

⁵ EPIC, AT&T, SPRINT and QWEST filed comments in the FCC proceeding on November 1, 2001; EPIC, AT&T and QWEST filed Reply Comments on November 16, 2001; and the National Association of Attorneys General (on behalf of the Public Counsel Attorney General of Washington and 38 other Attorneys General) filed a letter dated December 1, 2001. EPIC and the Public Counsel Attorney General of Washington repeat many of the arguments they made in their FCC comments. These arguments, however, fail to reflect the standard set forth in *Central Hudson* (see, e.g., QWEST Comments at pp. 5-6). Moreover, carriers have had access to CPNI under CI-III and various regulatory regimes for years, and the evidence shows that they have acted responsibly. Also, the references to generic "privacy polls" and concerns associated with the Gramm-Leach-Bliley Act are not relevant and do not meet the *Central Hudson* standard. Finally, it is counterintuitive to argue that customers who are concerned with privacy will not take the time to understand a privacy notice and opt-out. One would expect just the opposite.

⁶ See QWEST Supplemental Comments at page 10; AT&T Comments at p.1; Comments of SPRINT at p.2; Comments of Public Counsel Attorney General of Washington at p.9; and Comments of Allegiance Telecom of Washington, Inc. at p.1.

IMPLEMENTATION OF THE PROPOSED RULES WOULD HAVE AN IMMEDIATE NEGATIVE IMPACT ON CONSUMERS

As pointed out by Verizon in its comments filed on May 22, 2002, because the proposed rules are inconsistent with the FCC's rules, Verizon would need to immediately suspend its outbound marketing and sales activities once the rules became effective in Washington, even though Verizon has not implemented opt-out in Washington. This is because federal law and the FCC's rules allow certain uses of CPNI and communications with customers without having to use an opt-out or an opt-in procedure. For example, these rules permit a carrier to use CPNI derived from providing "local" services (i.e., exchange, toll, and exchange access) to offer CPE and voice messaging services as well as any other "local" telecommunications service without any form of customer consent. Under the Commission's proposed rules, a carrier would not be able to use CPNI to offer the caller-ID box with caller-ID service, the DSL modem with DSL service, voice mail with residential service, a second residential line, or DSL service to a residential customer. These are programs that Verizon has historically provided and customers have extensively utilized. The Commission's proposed rules would impose opt-out and opt-in requirements on these activities, which would mean that the company would have to suspend these activities, or would have to request a court to suspend the operation of the state rules.

Furthermore - - as Verizon discussed in its prior comments- - because the proposed state rules would differ from the FCC's rules, customers would receive multiple notices that are inconsistent with each other. Neither of these developments would be in the public interest.

CONCLUSION

The record overwhelmingly supports the view that the Commission should suspend its plans to revise its CPNI rules until after the FCC completes its work. To do otherwise would cause confusion for customers and unnecessary costs and administrative burdens for the

companies. More importantly, it would interfere with the companies' legitimate and beneficial uses of their business records and with constitutionally protected communications with customers. Therefore, Verizon urges the Commission to not enact the proposed rules.