

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Rule-Making )  
Proceeding Related to the )  
Telecommunications Companies )  
Chapter 480-120 WAC )  
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DOCKET NO. UT-990146

**Comments of Public Counsel  
Attorney General of Washington**

**August 13, 2002**

**I. INTRODUCTION**

Public Counsel files these comments in response to the Washington Utilities and Transportation Commission’s (Commission or UTC) August 2, 2002 email from Robert Shirley informing parties that additional comments were being solicited by the Commission regarding the Commission’s proposed customer proprietary network information (CPNI) rules and the Federal Communications Commission’s (FCC) recently adopted CPNI rules. *In the Matter of Implementation of the Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, As Amended; 2000 Biennial Regulatory Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, Third Report and Order and Third Further Notice of Proposed Rulemaking, CC Docket Nos. 96-115, 96-149, 00-257, Adopted: July 16, 2002, Released: July 25, 2002 (FCC Order). After reviewing this recent order from the FCC concerning CPNI we believe the Commission should reconsider its proposed rules and instead take this opportunity to provide the greatest degree of protection for Washington state consumers by adopting an all inclusive “opt-in” privacy regime.

## II. COMMENTS

### A. **The FCC Order does not preempt the Commission from adopting “opt-in” privacy protections.**

The FCC Order on CPNI adopts a mixed, opt-in, opt-out approach which requires opt-in consumer approval for sharing with unrelated third parties or carrier affiliates that do not provide communications-related services and permits the less protective opt-out approach for sharing information with affiliates providing communications-related services (including third-party agents and joint venture partners). *FCC Order* at para. 2 and Appendix B. However, the FCC Order expressly permits states to take different, more restrictive approaches than the one they have adopted. The FCC found that states may take different approaches to protecting CPNI for intrastate service based upon the record developed before them. *FCC Order* at para. 71.

Given the lack of asserted preemption by the FCC the Commission should strongly consider exercising its authority to provide consumers the protections afforded by an opt-in privacy regime.

### B. **The record before the commission supports an “opt-in” approach.**

During the pendency of this rulemaking proceeding the Commission has developed a significant factual and legal record that supports an opt-in privacy regime. Without recounting the factual and legal arguments again, it is important to note that like many other states, Washington has a state constitutional right to privacy not found in the federal Constitution. Const. Art. 1, § 7. See also *City of Seattle v. McCeady*, 123 Wn. 2d. 260, 270, 868 P.2d 134 (1994). Of the 414 comments from the citizens of the state received by this Commission 408 preferred to have opt-in protection of their CPNI, while three preferred opt-out and three were ambiguous. It is clear that the citizens of Washington who have chosen to express their opinion to the Commission have an overwhelming preference for opt-in protection and believe this is the best method of protecting their “private affairs” such as CPNI. Washington citizens have spoken



	FCC	FCC
	Carrier sharing CPNI with communications-related affiliate, third-party agents or joint venture partners providing communications-related services	Carrier sharing CPNI with unrelated third-parties or carrier affiliates that do not provide communications related services
UTC	<b>UTC – opt-in required</b>	UTC – opt-in required
Call detail CPNI	<b>FCC – opt-out allowed</b>	FCC – opt-in required
UTC	UTC – opt-out allowed	<b>UTC – opt-out allowed</b>
Non-call detail CPNI	FCC – opt-out allowed	<b>FCC – opt-in required</b>

As seen in the matrix above, there are two circumstances where a difference would exist between the proposed UTC rules and the FCC rules. The first is where call detail CPNI is shared by a carrier with its communications related affiliates, third-party agents or joint venture partners. The second is where non-call detail information is provided by a carrier to its non-communications related affiliates or third parties. In the first circumstance the Commission’s call detail framework provides greater protection than the FCC Order would provide. This would appear to be permissible under the FCC Order. Thus, a carrier could be in compliance with both the FCC and UTC rules if they provide for opt-in protection of call detail CPNI shared with affiliates, joint venture partners, or third party agents providing communications-related services.

The second circumstance would appear to create a situation where the FCC’s rules require carriers to provide opt-in notice but the Commission’s draft rules would only require opt-out notice for CPNI shared with all carrier affiliates. This would appear to create a situation

where carriers must offer opt-in protection to comply with the FCC's rules although the UTC's proposed rules would only require opt-out. *FCC Order* at Appendix B. The different frameworks in the FCC rules and the proposed UTC rules may lead to consumer confusion. We appreciate that the UTC is attempting to place greater protections on the most sensitive, "call detail" CPNI. However, we continue to strongly encourage the Commission to adopt rules that provide for comprehensive opt-in protection for all CPNI.

### III. CONCLUSION

Given the recently adopted FCC rules Public Counsel believes the Commission should reject its proposed CPNI rules and the call-detail framework, and in its stead adopt an all inclusive opt-in approach to protecting consumer's CPNI privacy.