

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

**In the Matter of the Rule-Making
Related to Telecommunications
Companies – Chapter 480-120
WAC**

**DOCKET NO. UT-990146
Customer Privacy Rules**

**Oral Comments of John O'Rourke,
Low Income Telecommunications
Project
August 20, 2002**

Good morning Chairwoman Showalter, Commissioner Hemstad and
Commissioner Oshie.

My name is John O'Rourke. I am the state coordinator of the Low Income
Telecommunications Project. The project's goal is to help low-income and
vulnerable households get hooked up to basic telephone service. We promote
access to basic telephone service because we fervently believe that phone
service is one of the most basic building blocks to households building their
support system, finding employment, and becoming self-sufficient.

I am here this morning to ask you to let Washington phone consumers
make the affirmative decision as to how and when their personal private
telephone service information is used. I am asking that you require that

Washington consumers opt in, in all circumstances, before phone companies can use their private information.

Unfortunately, my experience with the phone companies, in particular Qwest Corporation, shows that although they may have general policies in place ostensibly to protect against illegal activity, the marketing practices they promote are unethical and often lead to illegal behavior. They seek to manipulate our low-income and vulnerable clients into buying features they don't need or without permission they place unordered features on their phone bills. We oppose any rule that will allow Qwest, without specific opt-in permission, to use private and confidential information to not only continue these unethical and illegal marketing behaviors, but to expand them.

By way of background here is what our project has experienced: When we try to connect our low-income clients with basic phone service and ask that they be enrolled in the Washington Telephone Assistance Program, the primary barrier they confront is the phone company. Many are told that they have to call somewhere else to enroll in WTAP. Many are marketed expensive features that they don't need and can't afford. Many are not given all the WTAP credits to which they are entitled. Many are not granted the six-month repayment option on prior obligations allowed under Washington law.

But most disheartening of all, many of our low-income clients have charges put on their bill for features they never ordered. Many who ordered the most basic phone service are given the "popular choice" package instead. Many who ask for basic phone service and maybe one feature like caller ID are given the "custom choice" package instead.

Our low-income clients cannot afford these expensive packages. As a result, when I call back a month or two after helping them obtain basic phone service, a significant number are already disconnected or have large phone bills that do not reflect the services they asked for when they first ordered phone service. Our clients are being manipulated and illegally crammed. They are losing that important building block to self-sufficiency and our state is losing another productive tax paying citizen.

My recent research shows that my experience is typical. A press release from the State of Oregon, Department of Justice (See Appendix A) dated February 12, 2002 notes that a \$575,000 settlement was reached with Qwest over unauthorized charges on consumers' bills and misrepresentations concerning wireless and DSL services. In the press release Attorney General Hardy Myers is quoted as saying:

Qwest's unethical practices railroaded new customers into paying increased fees for services they did not need.... Their practices were particularly predatory against the elderly and non-English speaking 'new connect' customers.

The press release goes on to say:

Justice found that Qwest training materials instructed employees to conduct misleading "needs identification" interviews that invariably resulted in the recommendation of a "package solution," even if consumers' true needs were more basic and less expensive. Training materials taught employees to deflect consumer questions about less expensive options and lead them back to more expensive package deals.

Finally, the release also goes on to say:

Investigators found that some employees went beyond confusing customers to unlawfully telling them that packages were their only option.

And Oregon is not alone; on August 13, 2002 the Colorado Attorney General announced it had settled a case with Qwest for 1 million dollars “concerning alleged deceptive marketing of telephone services to the public.”

And what of the marketing practices of Qwest? Did they stop after the settlement with Oregon? Did they stop after Colorado began its investigation? It appears they did not.

Of note is testimony by Joe Gosiger, president of the Communications Workers of America Local 7019 and spokesperson for the Communications Workers of America Arizona State Council. He testified in front of the Arizona Corporation Commission on May 8, 2002, well after the Oregon settlement, and indicated the illegal activities were still continuing. (Appendix B) Mr. Gosinger’s union represents only Qwest sales center employees. Mr. Gosinger states:

The root cause of slamming and deceptive sales practices is an environment that has unbridled sales commission and incentive plans, coupled with unreasonable performance management plans that disciplines an employee solely for not meeting their sales objective.

He goes on to say:

As of today, we have not been able to find resolution of the root cause of the harsh environmental issues that drive an employee to step over the line to save their job and cram an order. Unfortunately, in many cases they have been following company scripting that is designed to increase sales.

And he notes that given the past history of cramming and the roots of its cause, Qwest has not eased up on sales thresholds for its employees, but has increased them. He states: “Without giving proprietary information out in this public forum, I will tell you the threshold for attainment has doubled since the US West/QWEST merger.”

It is into this sales environment run amok that these privacy rules will be put into effect. Unfortunately, every customer contact is considered a sales opportunity. Every bit of customer information is to be used to increase revenue and services. Therefore, we think phone customers should have the right to expressly decide whether they want their private information turned over to the uncontrolled marketers at the phone companies.

We hope that the commission will not be overly swayed by the Tenth Circuit opinion in *US West v. FCC* to which Qwest and others have decided to hitch their arguments. A case decided in Denver. There is quite a vigorous and compelling dissent by Judge Briscoe in that case. He makes several compelling points. Opt-in doesn't infringe on free speech rights, it merely asks for express and not implied approval to use personal information. US West did not challenge the constitutionality of the statute at question so the FCC order in question should not have been subject to First Amendment scrutiny. The FCC's CPNI order is a reasonable interpretation of the Telecommunications Act of 1996.

We ask that the commission require opt-in in all circumstances and continue the tradition in the state of Washington of providing greater privacy protection to Washington citizens than those granted by the federal government. Please do not be intimidated by the threat of a lawsuit. The overwhelming majority of Washington Citizens as reflected by their comments will support you when you protect their privacy.

Thank you for your attention.

John O'Rourke

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