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Statement of Robert Pregulman, Executive Director of the Washington Public Research Group (WashPIRG) to the WUTC Commissioners Regarding Proposed Rules Governing Telephone Companies' Use of Customer Phone-Record Information. Chapter 480-120 WAC, Docket Number UT-990146

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After reviewing the recent order from the FCC concerning CPNI, the Washington Public futerest Research Group (WashP1RG) believes that the WUTC should reject its proposed CPNI rules and the call-detail framework and instead adopt an all inclusive "opt-in" approach to protecting consumer's CPNI privacy. We believe that this would provide the greatest degree of protection for Washington citizens.

Such an approach is constitutional, and the only adequate method for assuring that customer privacy interests are protected. Further, evidence suggests that only opt-in systems adequately protect the public. Weare concerned with the manner in which "call detail" is defined in the proposed rule so as to exclude some call detail information associated with a specific customer from the opt-in requirements. Additionally, the creation ofa dual system of opt-in and opt-out for different types of personal customer information is confusing and cumbersome.

Privacy hanns caused by opt-out are real and substantial, and outweigh the burden on the telecommunications carriers' use of such information. Furthermore, given the choice, consumers overwhelmingly prefer an "opt-in" vs. an "opt-out" system. In its comments to the Commission earlier this year, Qwest asserted that "existing record evidence shows that individuals understand opt-out approval models," and are "pleasantly engaged" by these processes. This customer enjoyment of the opt-out process was not reflected by citizens who voted in the recent referendum in North Dakota, in which 72 percent of the voters chose an opt-in vs. an opt-out system. In addition, the consumer reaction in Washington to Qwest's opt-out approach to CPNI data, which it attempted to implement in January, most clearly illustrates that consumers are not "engaged" by the opt-out system.

Commercial speech jurisprudence recognizes that the government has a valid reason for regulating speech where the impetus for the speech is commercial gain. Therefore, commercial speech is subject to a lower level of constitutional scrutiny. In this context, the government's determination to impose an opt-in approach to sensitive customer calling data meets its First Amendment burden of providing a substantial government interest and narrowly tailored means.

There is substantial evidence that opt-out, specifically in the context of CPNI, fails to sufficiently protect customer privacy interests. In light of this evidence, an opt-in regime meets the obligations of the Commission to protect customer privacy while also balancing the First Amendment rights of the telecommunications carriers to survive Constitutional scrutiny. Customers can only adequately protect their private telecommunications information with a comprehensive opt-in system.

Finally, I would like to add that with the almost daily revelations of corporate misconduct, it is certainly ironic that phone companies are asking the public to trust them to do the right thing when it comes to collecting and disseminating private call information. Public trust of corporate behavior is at an all time low, and now, more

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than ever, people want to have the final say on what corporations can or cannot do with their private infonnation.

For all the reasons set forth above and contained within the comments of the signing organizations, the Commission should adopt a comprehensive opt-in regime to cover all types of customer account information, including information it currently classifies as "not call detail" and other private account information.