

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

**In the Matter of the Telecom Tune-
up Rulemaking**

**DOCKET NO. UT-040015
Telecom Tune-Up**

**Comments of the
Citizens Utility Alliance of Washington
September 10, 2004**

The Citizens Utility Alliance of Washington (Alliance) respectfully submits the following comments pertaining to the above referenced docket. We thank the Commission for this opportunity to comment and for its careful consideration of these important issues.

Customer Proprietary Network Information (CPNI)

We are quite concerned and alarmed that the current draft rules propose adoption by reference of the FCC rules that pertain to CPNI. This draft language indicates at best, a step away from, and at worst, a total abandonment, of the careful and deliberate process the Commission has engaged in for many years to do the most it can to protect the privacy of Washington residents. As the Commission stated in paragraph 48 of its General Order dated November 11, 2002:

“The potential harm from use and disclosure, without consent, of individually identifiable call detail information is significant.”

We understand that court action instituted by Verizon overturned the CPNI rules adopted by the Commission, but the court’s decision did not preclude further action by the Commission on the CPNI issue. Most revealingly the court, in *Verizon v. Showalter*, 282 F. Supp.2d 1187 (W.D. Wash. 2003), found “there is a substantial state interest in ensuring that consumers be given an opportunity to approve uses of their CPNI.” The court also recommended that the Commission “more stringently regulate the form and content of opt-out notices.” *Showalter* at 14.

The court's language is in line with the findings outlined in the Commission's November 11 CPNI order. In paragraph 85 the order states:

A fundamental difficulty to be overcome by opt-out regulations is that the companies responsible for implementing such regulations may have an incentive *not* to provide a notice that customers will actually recognize, take the time to read, understand, and easily register a disapproving response. As a result, previous attempts at making opt-out schemes work have failed to some degree in (1) getting customers' attention, (2) presenting them with their options in language they understand, and (3) providing them with a simple manner of registering their disapproval, if they so choose.

The Commission order cites studies that show many people do not read or do not understand opt-out notices. It also cites studies that show that the percentage of people who actually opt-out is much less than the amount of people polls suggest would opt-out if they received effective notice.

Clearly, as the Commission found, opt-out notices come up short and currently don't do what they are intended to do. We urge the Commission to develop effective opt-out notice rules for Washington.

The Commission should take great pride in the record it has developed on the CPNI issue. Unfortunately, we see the adoption of the present draft rules as discarding that important legacy. The extensive record that this Commission has developed demands further action.

WAC 480-122-020 Washington telephone assistance program.

The Alliance is concerned that there may be parts of the state that do not have a designated ETC, and that WTAP customers may have little if any competitive choices in those areas. We therefore recommend the Commission allow for further opportunity to review this proposed rule prior to moving it to CR-102.

Respectfully submitted this 10th day of September, 2004

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