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THE HONORABLE BARBARA ROTHSTEIN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Verizon Northwest, Inc., Bell Atlantic
Communications, Inc. d/b/a Verizon
Long Distance, NYNEX Long Distance
d/b/a Verizon Enterprise Solutions,
Verizon Select Services, Inc., and
Verizon Services Corporation,

Plaintiffs,

v.

Marilyn Showalter, Chairwoman; Patrick
Oshie and Richard Hemstad,
Commissioners, in their official
capacities as members of the Washington
Utilities and Transportation Commission,
and Washington Utilities and
Transportation Commission,

Defendants.

NO. CV02-2342R

DECLARATION OF GLENN
BLACKMON IN OPPOSITION
TO PLAINTIFFS' MOTION FOR
A PRELIMINARY INJUNCTION

I, GLENN BLACKMON, Ph.D., pursuant to 28 U.S.C §1746(2), declare under
penalty of perjury as follows:

1 1. I am the Assistant Director for Telecommunications of the Washington Utilities
2 and Transportation Commission (WUTC). A copy of my background and experience is
3 attached as Exhibit 1 to this declaration. In the course of my responsibilities I have become
4 familiar with the services and practices of telecommunications companies, including Verizon
5 Northwest and its related Verizon companies, that operate in the State of Washington. I am
6 familiar with the rules adopted by the WUTC that the plaintiff Verizon companies challenge in
7 this action.
8

9 2. The attorneys for the State defendants in this action asked me to review the
10 Declaration of Maura Breen filed in support of plaintiffs' motion for a preliminary injunction
11 and to provide testimony in response to Ms. Breen's characterization of the WUTC rules and to
12 rebut some of her allegations of how the Verizon companies will be harmed when the Rule
13 takes effect on January 1. I am over eighteen years of age, am competent to make this
14 declaration, and make it upon personal knowledge.
15

16 3. In sum, and as elaborated upon below, it is my opinion that Ms. Breen
17 miscomprehends the reach of the WUTC rules and has severely overstated its impact on the
18 operations of the Verizon companies.
19

20 4. Ms. Breen generally overstates and misrepresents the effect on Verizon of the
21 Washington rule, particularly at paragraph 21 where she says that it would "silence commercial
22 and non-commercial speech of VSC and the Verizon entities in the State of Washington." She
23 misunderstands or misrepresents the rules in several key respects: (a) She fails to acknowledge
24 that even the most sensitive and detailed information about customer telecommunications uses
25 is not subject to the WUTC rules at all once the personal identifiers are removed; (b) She fails
26

1 to acknowledge that much of the customer-specific information that would be used to target the
2 marketing of services is not included in “call detail” and therefore is not subject to opt-in
3 approval when used within the company; and (c) She fails to acknowledge that the rule provide
4 a reasonable method for telecommunications companies to obtain informed opt-in approval
5 during a telemarketing call.
6

7 **I. USE OF CALL DETAIL TO DEVELOP PRODUCTS, SERVICES, AND**
8 **MARKETING**

9 5. In her declaration, in paragraph 21, Ms. Breen opines that the WUTC rules
10 would “silence commercial and non-commercial speech of VSC and the Verizon entities in the
11 State of Washington.” Ms. Breen is simply wrong in her understanding of the impact of the
12 rules on Verizon’s ability to use customers’ private information, including call detail, to
13 develop products and services or its approach to marketing those products and services.
14 Verizon and other telecommunications companies can use call detail for these marketing
15 purposes with no notice to the customer and with no approval by the customer, so long as it
16 first removes the identity of specific customers from the data. Verizon’s marketing staff and
17 any contractors or partners could be provided with a rich data set that reveals a complete cross-
18 section of customers’ calling patterns, choice of services options, and spending levels, as long
19 as that data set did not include the identity of the individual customers.
20

21 6. While the rules do not eliminate Verizon’s ability to use call detail in marketing,
22 they do restrict Verizon from some marketing activities that it might otherwise engage in. To
23 the extent Verizon’s current or planned marketing practices include the merging of its call
24 detail data with other data that identifies a particular person’s income, grocery and department
25 store purchases, credit and debit card purchases, banking and financial service relationships,
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1 real estate ownership, automobile ownership, television viewing habits, age, marital and family
2 status, Internet site visits, education level, credit history and score, criminal history, political
3 affiliation, religious association, and other personal characteristics, these practices would be
4 restricted by the rules. This use of call detail as part of a larger personal profile would not be
5 possible once the customer's identity has been removed. Therefore Verizon would have to tell
6 the customer about this use of the call detail and obtain the customer's opt-in approval before
7 including call detail in such a data set. This level of customer privacy protection is not
8 provided by the federal rules that Verizon prefers.

10 7. Ms. Breen generally overstates the amount of information that is included in
11 "call detail" and in doing so understates the degree to which individually identifiable
12 information is available for marketing purposes. The rules restrict the use of call detail, but
13 they exclude from call detail the types of information that would be used in the various
14 examples offered by Ms. Breen. Such customer characteristics as (a) having a high monthly
15 toll bill, (b) subscribing or not subscribing to a particular service, or (c) making a large volume
16 of international calls are not call detail. Therefore, these individually identifiable
17 characteristics can be used by Verizon for marketing purposes without obtaining the
18 customer's opt-in approval.

21 **II. USE OF CALL DETAIL IN TELEMARKETING**

22 8. Ms. Breen's declaration also fails to acknowledge that the WUTC rules allow
23 Verizon to use even the most sensitive call detail information for marketing purposes during a
24 telemarketing call if it first obtains the customer's permission. Verizon need not have provided
25 any written notice beforehand. During an outbound marketing call, i.e., a telemarketer call to
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1 the customer, the Verizon representative could provide an oral notice of the customer's privacy
2 rights and, if the customer grants oral approval, immediately begin using call detail
3 information for marketing purposes. If the call was originated by the customer, perhaps in
4 response to Verizon's marketing materials, the company is not even required to provide the
5 oral notice.
6

7 9. Here is a realistic example of how Verizon might make full use of call detail,
8 without obtaining a written opt-in approval, in its commercial communication with its
9 customers:

- 10 a. Verizon uses its call detail data with personal identifiers removed to develop
11 various product offerings. No notice or approval is required for this use.
12
13 b. Verizon informs customers that it will be using personal account information
14 (excluding call detail) for marketing purposes unless the customer opts out of
15 this use. This notice uses the opt-out approach that Verizon favors. Depending
16 on the service being marketed, even this opt-out notice may not be required.
17
18 c. For those customers who do not object in response to the opt-out notice,
19 Verizon uses the monthly data on calling patterns to produce a list of target
20 customers for its telemarketing calls.
21
22 d. Verizon makes telemarketing calls to those target customers. During the call
23 the Verizon telemarketer provides oral notice and, if the customer approves,
24 immediately uses call detail to market the service to the customer.
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1 Under this approach Verizon never relies on the opt-in mechanism that it finds so
2 unsatisfactory, and yet, unless the customer objects, it is ultimately able to use every element
3 of a customer's private information for marketing purposes.

4 **III. MISCHARACTERIZATIONS OF THE WASHINGTON RULE IN SPECIFIC**
5 **EXAMPLES**

6 10. In several specific examples Ms. Breen misrepresents the effect of the WUTC
7 rules on Verizon. For example, at paragraph 5, Ms. Breen states that Verizon would have been
8 "effectively banned" from using call detail information to develop and implement its Call
9 Intercept service. She does not explain why Verizon would need to have individually
10 identifiable call detail, as opposed to call detail statistics that have had personal identifiers
11 removed, in order to develop the Call Intercept service. There is no reason to believe that
12 individually identifiable information is necessary for product development, since products are
13 not developed for individual customers but instead for broad groups of customers. Even the
14 most targeted product offering would not be based on the characteristics of a single customer.
15 Therefore she is incorrect in stating that call detail could not be used under the WUTC rules to
16 develop a product or service. Ms. Breen is also incorrect in stating that call detail could not be
17 used to implement the service. It is correct that call detail would be used in providing the
18 service to those customers who subscribe to it, because the telephone number of the calling
19 party is used to screen calls. She is incorrect in stating that this use would be prohibited,
20 because it is being used to provide the service rather than to market the service, and this is an
21 allowed use of call detail.
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24 11. Also in paragraph 5, Ms. Breen states that Verizon is planning to market
25 services via the Internet using "pop-up ads" on its web site. Pop-up ads are the additional
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1 browser windows that appear, without prompting by the viewer, when a person is viewing a
2 web site. They remain open even after the viewer has left the web site that generated the pop-
3 up ad window. While Ms. Breen is not specific in describing Verizon's planned application, it
4 appears that the marketing message that would appear in the pop-up ad would vary based on
5 the characteristics of the customer. Further, it appears that those customer characteristics
6 would be defined using CPNI. If Verizon is planning to use characteristics such as "customer
7 does not subscribe to Caller Identification service" or "customer already subscribes to toll
8 Package X," then she is incorrect in stating that this use would be banned or would require opt-
9 in approval. These types of information are not call detail, and opt-out approval would be
10 required if the information is used to market an unrelated service. No notice or approval is
11 required if the information is used to market a related service. If Verizon is really planning to
12 use pop-up ads with messages that are based on the call detail characteristics such as "customer
13 called Lands End last week," then opt-in approval would be required. While opt-in approval
14 would be required, Verizon could use the same Internet interaction with the customer to
15 explain this proposed use of private information and solicit the customer's opt-in approval.
16 However, I agree with Ms. Breen that most customers, once they understood their private
17 information was to be used in this way, would not give their approval. This result would
18 demonstrate why opt-in approval is appropriate.
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22 12. Another incorrect or misleading example is at paragraph 14, where Ms. Breen
23 describes Verizon's use of CPNI to market the company's Local Package Plus plan.¹ In this
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25 ¹ The Local Package Plus plan is not offered to Washington customers. From my review of the marketing
26 material on Verizon's web site, it appears that Verizon offers Local Package Plus in several eastern states. The
plan does not, as Ms. Breen states, include unlimited toll calls. Rather, the included toll calls are limited to those
within the customer's regional calling area. Verizon markets a toll package, called the Timeless Plan, to

1 example, Ms. Breen states that Verizon uses CPNI to identify customers with high toll usage
2 “who may be better served” by the Local Package Plus plan. She also says that Verizon
3 “identifies and informs its customers of the optimal long distance plan for their particular
4 needs.” I am familiar with the Local Package Plus plan, even though it is not actually offered
5 to Washington state customers. (The fact that Verizon does not offer the plan in Washington
6 cannot be attributed to the existence of Washington’s privacy rule, because Verizon also does
7 not offer it in several other states that do not have state privacy rules.) There is no component
8 of this plan that requires knowledge of call detail in order to determine whether a customer
9 would benefit from that plan. For example, the plan includes local toll calls in the flat monthly
10 charge for the package, so knowledge of the customer’s monthly charges for local toll calls
11 would help determine whether the customer would pay less under the plan. That information is
12 not call detail. The particular details of whom, when, and where a customer calls are irrelevant
13 to this determination, because the plan’s rates do not depend on this level of detail. Similarly,
14 the plan includes “last call return (*69)” service, so it would be helpful to know how many
15 times per month the customer uses this service, but that information is not call detail. The call
16 detail about exactly when the customer used *69 and which calls were returned is irrelevant to
17 the determination of whether the plan benefits the customers.
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21 13. Ms. Breen’s statements about using customers’ private information to determine
22 whether a customer would “benefit” from a particular plan or service suggests that Verizon is

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24 _____
25 prospective Local Package Plus customers. The Timeless Plan is not actually timeless: Customers pay a per-
26 minute rate for toll calls outside the regional calling area. The Verizon Local Package Plus plan is substantially
more expensive than basic local service. The charge is \$45 to \$55 per month, or about two to three times charge
for local service purchased outside a package or plan.

1 engaging in marketing efforts that reduce its revenues, because the customers targeted through
2 this approach would apparently pay less with the identified plan. I agree that this is one
3 possible use of customers' private information; Verizon and other telecommunications
4 companies could use CPNI to reduce their revenues in this fashion. However, it is a mistake to
5 suggest that all potential uses of CPNI benefit the customer. Verizon and other companies
6 could also use CPNI to engage in upselling, i.e., targeting those customers who currently spend
7 less than the cost of the package and attempt to increase revenues by converting them to the
8 higher-price package. Within the telecommunications industry, it is a common strategy to
9 increase per-customer revenue through the marketing of packages to customers on basic
10 service rates. Verizon would identify customers who spend only a moderate amount per month
11 on telecommunications services and market the Local Package Plus plan to those customers
12 only. Verizon might well characterize this as "benefiting" the customer, because the package
13 price would be lower than the sum of the prices of stand-alone components, including those
14 components that the customer does not currently use. This use of CPNI to target its marketing
15 messages could permit Verizon to avoid informing those customers who would actually benefit
16 from the plan because they currently pay more for the same set of services. There is a
17 significant danger posed by the use of CPNI in "upselling." Qwest recently settled a major
18 consumer protection case with the Washington Attorney General. In that case, there were
19 allegations based on numerous complaints received by the WUTC and the Consumer
20 Protection Division of the Attorney General's Office that Qwest had misled consumers into
21 taking more services (and more expensive services) than they needed. Unfettered access to
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1 call detail would make it easier to engage in such practices. Conversely, limiting access to call
2 detail, except on an opt-in basis, would make it more difficult to engage in such practices.

3 14. In another example in paragraph 14, Ms. Breen states that Verizon was able to
4 use CPNI to identify customers with high toll usage who may be better served by Verizon's
5 Local Package Plus plan. The Washington rule limiting use of call detail would not prevent
6 Verizon from using CPNI in this way in Washington state, if the company actually offered
7 Local Package Plus here, because the amount of a customer's total monthly toll charges is not
8 call detail.

9
10 15. Also in paragraph 14, Ms. Breen states that Verizon designs specially tailored
11 products and services using CPNI from all customers. She states that "these uses of CPNI are
12 banned under the WUTC rules absent prior written or otherwise verified opt-in consent." This
13 statement is incorrect. Telecommunications companies can use CPNI to design products and
14 services, as long as the CPNI is not associated with an identifiable individual.

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16 **IV. OTHER MISCHARACTERIZATIONS OF THE WUTC RULES**

17 16. At paragraph 22, Ms. Breen states that the customer information that is
18 excluded from the definition of call detail is not available to Verizon because the information
19 could not be obtained except by examining call detail itself. This is an unreasonable,
20 unsupported, and incorrect interpretation of the rules. A telecommunications company can
21 manipulate customer information, including call detail, in order to remove the more-protected
22 information about specific telephone calls or to remove any customer identifiers. If there were
23 a legitimate dispute on this point, it could be readily eliminated by seeking clarification or a
24 declaratory order from the WUTC.
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1 17. At paragraph 22, Ms. Breen states that the definition of call detail is vague and
2 confusing because it does not include “an explanation as to why information ... is subject to
3 maximum privacy protection if it pertains to a three-week period but [not] if it is for a period of
4 one month or more.” The absence of an explanation does not make the definition vague or
5 confusing. Verizon may not understand why the line was drawn at one month instead of three
6 weeks, but it cannot be confused about where the line is drawn. It is standard practice among
7 telecommunications companies to bill customers on a monthly basis; for example, Verizon’s
8 Local Package Plus is provided on a monthly basis. This makes monthly aggregation a logical
9 and understandable break point between call detail and other, less sensitive account
10 information.
11

12 18. In paragraphs 23 through 25, Ms. Breen addresses the use of agents and
13 independent contractors, as well as consulting firms, equipment manufacturers, and software
14 manufacturers. She again arrives at unreasonable, unsupported, and incorrect interpretations of
15 the rules. She assumes that Verizon cannot share CPNI with agents. Because an agent is
16 responsible under the law to the same degree as Verizon, use of CPNI by an agent is the same
17 as use of CPNI by Verizon. Again, if there were a legitimate dispute on this point, it could be
18 readily eliminated by seeking clarification or a declaratory order from the WUTC.
19

20 19. With regard to independent contractors and joint-venture partners, who are not
21 agents of Verizon, it is the case that the Washington rule requires opt-in approval before
22 individually identifiable CPNI can be disclosed or sold. However, as stated earlier in this
23 declaration, Verizon and its contractors and joint-venture partners could use a rich data set that
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1 reveals a complete cross-section of customers' calling patterns, choice of services options, and
2 spending levels so long as that data set did not include the identity of individual customers.

3 **V. ALLEGED HARM TO VERIZON'S REPUTATION OR GOODWILL**

4 20. Ms. Breen states at paragraph 11 that the reason Verizon did not implement an
5 opt-out approach in Washington state is that the WUTC had a privacy rule requiring opt-in
6 approval. I believe this was not Verizon's reason for excluding Washington customers from its
7 opt-out approach. Rather, Verizon chose not to include Washington customers because doing
8 so would have hurt the reputation and goodwill of the company. On November 6, 2001,
9 Verizon informed the WUTC of its view that the then-effective privacy rule was
10 unconstitutional and asked the WUTC to "clarify" that the rule permitted an opt-out approach.
11 In the period from November 2001 to January 2002, I had several discussions with Verizon
12 representatives who said the company was considering seeking a waiver or clarification of the
13 WUTC rule as it was preparing to implement its national opt-out approach. Verizon sought
14 and obtained a comparable change in rule in Texas. Verizon never requested waiver or formal
15 clarification in Washington. During this time Qwest Corporation was subject to extremely
16 negative publicity resulting from its attempted implementation of an opt-out approach. I
17 believe that the most reasonable explanation of Verizon's decision to exclude Washington
18 customers from the opt-out procedure was the prospect of negative public reaction, rather than
19 the prospect of enforcement action by the WUTC.
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23 21. Verizon had good reason to anticipate negative public reaction from issuing an
24 opt-out notice to its Washington customers. Verizon closely followed the public outcry that
25 resulted in this state from Qwest's attempt to use an opt-out approach. I provided Verizon with
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1 dozens of electronic mail messages objecting to this practice, and hundreds more were
2 available to it on the WUTC web site. These customer comments opposed not just the sale or
3 disclosure of private information to third parties – a practice Verizon says it has no “present
4 plans” to implement – but also the use of sensitive calling information in the company’s own
5 internal marketing efforts. In addition to these overwhelmingly negative public comments,
6 several of the state’s newspapers have published editorials calling on the WUTC to protect
7 customers’ privacy and, since the WUTC acted in November, praising the WUTC’s decision to
8 adopt the privacy rule now being challenged by Verizon. Three recent editorials are included
9 as Exhibit 2 to this declaration.
10

11 Pursuant to 28 U.S.C. § 1746(2), I hereby declare under penalty of perjury under the
12 laws of the United States that the foregoing is true and correct.
13

14 EXECUTED on this _____ day of December, 2002.

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16 _____
17 GLENN BLACKMON
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