



American Civil Liberties Union of Washington

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10 April 2002

Washington Utilities & Transportation Commission
Box 47250
Olympia WA 98504-7250

Re: Proposed Rules WAC 480-120-201 to 209, & 211 to 216
Docket No. UT-990146

Dear Commissioners:

The American Civil Liberties Union of Washington strongly believes in customers' right to control the use and distribution of personal information provided to telecommunications companies. We applaud the Washington Utilities and Transportation Commission's (WUTC) intent to strengthen customers' control over the use and distribution of their personal information. Nevertheless, we believe that these proposed rules will be less effective than previous drafts in fully protecting customer privacy (see ACLU-WA earlier comments to draft rules).

We believe that the most effective way to give customers control over the ownership and use of their personal information is to employ an "opt-in" approach. We applaud the Commission for retaining opt-in procedures for the use and sharing of a customer's call detail information. Earlier drafts of the rules designated opt-in procedures for marketing a new category of services to customers and sharing information with related entities. It is disappointing to see that the final proposal reverts to "opt-out", in these circumstances. We believe opt-out unfairly places the burden on customers to prohibit unwanted sharing and use of their account information.

Information sharing for marketing purposes is of significant concern to the public. There are numerous instances where opt-out rules have failed to give customers effective control over their information, and customers have strongly voiced their displeasure at this state of affairs. A prime example is Qwest's recent attempt to employ an opt-out process for sharing customer information. Qwest's opt-out mechanism failed by sending confusing and misleading notices to customers about whether the information would be shared or sold and when customers were unable to get through to the toll-free phone number to process opt-out requests. Although these problems led Qwest to withdraw its plans, and the proposed rules seek to improve opt-out procedures, the public backlash to this incident demonstrates the problems created when customers are not given full and effective control over their own personal information. When customers' private

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information is presumed as the company's property (the presumption underlying opt-out), customers do not have full and effective control of their information.

American jurisprudence recognizes a fundamental right to privacy in one's personal communications, and both the courts and Congress have recognized the paramount interest citizens have in protecting their privacy. An opt-in approach is consistent with the First Amendment and is the most effective way to ensure customers are fully informed about, and given control over, how their personal information is used.

We applaud the efforts undertaken by the Commission to address the important issue of customer information privacy. Nevertheless, we urge the Commission to consider adopting the earlier draft rules that institute opt-in mechanisms for using and sharing customers' personal information.

Sincerely,

A handwritten signature in black ink, appearing to read "Gérard John Sheehan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gérard John Sheehan
Legislative Director