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**ARIZONA CORPORATION COMMISSION**

**STAFF SECOND DRAFT – PROPOSED CPNI RULES**

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To: All Interested Parties

Date: August 13, 2004

Re: Proposed CPNI Rules – Docket No. RT-00000J-02-0066

On April 2, 2004, Staff sent to all interested parties three sets of proposed CPNI rules. Staff requested comment from interested parties on the three sets of rules by May 17, 2004. Comments were filed by Qwest Corporation, Qwest Communications Corporation and Qwest LD Corporation (collectively "Qwest"), AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively "AT&T"), Sprint Communications Company LP and Sprint Spectrum LP (collectively "Sprint"), the Residential Utility Consumer Office ("RUCO"), Cox Arizona Telcom, L.L.C. ("Cox"), MCI, Inc. ("MCI"), and the Arizona Local Exchange Carriers Association ("ALECA").

Based upon the comment received from all parties, Staff has enclosed a newly revised set of proposed CPNI rules for your review and comment. The proposed Draft is based on the third set of rules which Staff originally sent to interested parties on April 2, 2004. The proposed Draft uses a combination of opt-in and opt-out procedures modeled on the current FCC rules, combined with additional verification procedures. These proposed rules are only a Staff draft, and may be modified by Staff at any time.

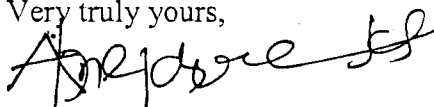
The Second Draft contains the following major changes from the First Draft:

- A Added Section: **Obtaining Approval for One-Time Use of CPNI** (new section xx07)
- B Removed Section: **Waiver of the Rules** (old section xx11)
- C Revised Section: **Recurring Reminders** (old section xx07, new section xx10)
  - 1) Relaxed recurring reminder requirement from monthly to annual.
- D Revised Section: **Verification** (old section xx06, new section xx08)
  - 1) Specified "a reasonable amount of time" in which the company must obtain verification of Opt-Out approval to be 180 days;
  - 2) Added statement that if the company fails to obtain verification within the 180 days, the Opt-Out approval to use CPNI is no longer valid;

- a) \*Must add provision that requires the company to direct any entities (affiliates, joint-venture partners, or independent contractors) to whom it has released CPNI to stop using the CPNI after 180 days if Verification has not been obtained;
  - 3) Streamlined the Verification Process to allow for verification by written, electronic or recorded oral methods.
  - 4) Added a prohibition on combining an inducement with an oral verification. This makes the procedure for oral verification consistent with the rules for written or electronic verification.
- E. Revised Section: **Obtaining Approval for Release to 3rd Parties** (old section xx08, new section xx04 (B))
- 1) Strengthened requirement such that release to a 3rd party requires prior express written approval by the customer specifying the 3rd party to which the CPNI may be released.
- F. Revised Section: **Confirming a Customer's Approval** (old/new section xx09)
- 1) Removed requirement for confirming customer Opt-Out approval because the company must *verify* the opt-out approval;
  - 2) Relaxed requirement for confirming customer Opt-In approval by eliminating the 30-day waiting period to use the CPNI after the confirmation has been mailed.
- H. Added Section: **Severability** (new section xx12)

Staff encourages all interested parties to provide comments and input. Please review these proposed rules and file an original and 13 copies of your comments with the Commission's Docket Control Center, 1200 W. Washington, Phoenix Arizona 85007 on or before **August 23, 2004**. Further, all interested parties are invited to a workshop on **September 2, 2004** at 10:00 AM Arizona time at the Commission's offices at 1200 West Washington Street, Phoenix, Arizona. Staff appreciates the input of all interested parties in the development of these important rules.

Very truly yours,

*for*   
Ernest G. Johnson  
Director, Utilities Division

cc: Chairman Marc Spitzer  
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Arizona Consumer Groups  
Residential Utility Consumer Office  
Public Advocacy Division, Arizona Attorney General's Office

## Draft CPNI Rules

- R14-2-xx01 Application of The Rule
- R14-2-xx02 Definitions
- R14-2-xx03 Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Affiliates, Joint Venture Partners, and/or Independent Contractors Providing Communications-Related Services
- R14-2-xx04 Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Third Parties and Affiliates That Do Not Provide Communications-Related Services
- R14-2-xx05 Information Requirements for Customer CPNI Opt-In Notice
- R14-2-xx06 Additional Information Requirements for Customer Opt-Out Notice
- R14-2-xx07 Notification Requirements for Obtaining Customer Approval for Limited One-Time Use of CPNI for Inbound and Outbound Customer Telephone Contact
- R14-2-xx08 Verification of Customer Opt-Out Approval to Use CPNI
- R14-2-xx09 Confirming a Customer's Opt-In Approval
- R14-2-xx10 Reminders to Customers of Their Current CPNI Release Election
- R14-2-xx11 Duration of Customer Approval or Disapproval to Disseminate the Customer's CPNI
- R14-2-xx12 Severability

### **R14-2-xx01. Application of the Rule**

These rules govern the treatment of Customer Proprietary Network Information (CPNI) for all telecommunications companies that provide telecommunications service in Arizona. In addition, the Commission adopts, incorporates, and approves as its own 47 CFR § 64.2001 through 2009, revised as of September 20, 2002 (and no future amendments), incorporated by reference, on file with the Office of the Secretary of State, and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975. These rules are in addition to the FCC rules and together with the FCC rules govern the release of CPNI in Arizona.

### **R14-2-xx02. Definitions**

A For purposes of this Article, the following definitions apply unless the context otherwise requires:

- 1) "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.
- 2) "Communications-related services" means telecommunications services, information services typically provided by telecommunications carriers, and services related to the provision or maintenance of customer premises equipment.
- 3) A "Customer" of a telecommunications carrier is a person or entity to which the telecommunications carrier is currently providing service.
- 4) "Customer premise equipment" means equipment employed on the premises of a person (other than a telecommunications carrier) to originate, route, or terminate telecommunications.
- 5) "Customer proprietary network information (CPNI)" means information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information. See 47 U.S.C. § 222(h)(1) revised 1999 (and no future amendments), incorporated by reference, on file with the Office of the Secretary of State, and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.
- 6) "Non-listed Service" means a service that ensures that customers' telephone numbers are not published in the telephone directory but are available through directory assistance.

- 7) "Non-published Service" means a service that ensures that customers' telephone numbers are not published in the telephone directory and are not otherwise available through directory assistance.
- 8) "Opt-In approval" means a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI that requires that the telecommunications carrier obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided notification of the carrier's request in conformance with section R14-2-xx05.
- 9) "Opt-Out approval" means a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI where a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to affirmatively object to approval within the 30-day waiting period provided in R14-2-xx03(C) after the customer is provided the notice as required in R14-2-xx06, subject to the requirements of section R14-2-xx08.
- 10) "Published" means authorized for voluntary disclosure by the individual identified in the listing.
- 11) "Subscriber list information" means any information identifying the listed names of subscribers of a telecommunications carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format. See 47 U.S.C. § 222(e)(1) revised 1999 (and no future amendments), incorporated by reference, on file with the Office of the Secretary of State, and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.
- 12) "Telecommunications carrier" means a public service corporation, as defined in the Arizona Constitution, Article 15, § 2, which provides telecommunications services within the state of Arizona and over which the Commission has jurisdiction.
- 13) "Third Party" means a person who is not the customer, the customer's telecommunications service provider, an affiliate, joint venture partner, or independent contractor of the customer's telecommunications service provider.

**R14-2-xx03. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Affiliates, Joint Venture Partners and/or Independent Contractors Providing Communications-Related Services**

- A A telecommunications carrier may, subject to opt-out approval or opt-in approval:
- 1) Use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer;
  - 2) Disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents; its

affiliates that provide communications-related services; and its joint venture partners and independent contractors;

- 3) Permit such persons or entities to obtain access to such CPNI for such purposes.
- B Any solicitation for customer approval must be accompanied by a notice to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI. For the purpose of obtaining opt-in approval, the notice must comply with the requirements of Section R14-2-xx05 of these rules. For the purpose of obtaining opt-out approval, the notice must comply with the requirements of Section R14-2-xx06 of these rules.
- C Telecommunications carriers must wait a 30-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose or permit access to CPNI. A telecommunications carrier may, in its discretion, provide for a longer period.
- D The telecommunications carrier shall be required to execute a proprietary agreement that meets the minimum requirements set forth in 47 CFR § 64.2007(b)(2), revised as of September 20, 2002 (and no future amendments), incorporated by reference, on file with the Office of the Secretary of State, and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975 with all affiliates, joint venture partners and independent contractors to maintain the confidentiality of the customers' CPNI.

**R14-2-xx04. Obtaining Customer Approval to Use, Disclose, or Permit Access to CPNI to Third Parties and Affiliates That Do Not Provide Communications-Related Services**

- A A telecommunications carrier may, subject to opt-in approval, use, disclose, or permit access to its customer's individually identifiable CPNI to affiliates that do not provide telecommunications-related services.
- B A telecommunications carrier may, subject to express prior written request, use, disclose, or permit access to its customer's individually identifiable CPNI to any third party specifically identified by the customer.
- C Any solicitation for customer approval must be accompanied by a notice to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI. For the purpose of obtaining opt-in approval, the notice must comply with the requirements of Section R14-2-xx05 of these rules.
- D The telecommunications carrier shall be required to execute a proprietary agreement that meets the minimum requirements set forth in 47 CFR § 64.2007(b)(2), revised as of September 20, 2002 (and no future amendments), incorporated by reference, on file with the Office of the Secretary of State, and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975 with all affiliates, joint venture partners, independent contractors, third parties, and affiliates that do not provide communications-related services to maintain the confidentiality of the customers' CPNI.

- E A telecommunications company relying on “Opt-In” approval must bear the burden of demonstrating that such approval has been given in compliance with sections R14-2-xx04 and R14-2-xx05 of these rules.

**R14-2-xx05. Information Requirements for Customer CPNI Opt-In Notice**

- A A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods.
- B The contents of any such notification must:
  - 1) Include the definition of customer proprietary network information contained in 47 USC § 222(h)(1); 1999 amendment (and no future amendments), incorporated by reference, on file with the Office of the Secretary of State, and copies available from the Commission Office, Legal Division, 1200 West Washington, Phoenix, Arizona 85007 and the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975;
  - 2) Be mailed separately from any inducements, advertising or promotional information. The notice shall not be included in the customer’s bill;
  - 3) Be clearly legible, in twelve-point or larger print;
  - 4) Be posted on the company’s web site;
  - 5) Inform customers that their name, address, and telephone number, if published in the telephone directory or associated with a customer who subscribes to non-listed service, is not private information and will not be withheld from telemarketers;
  - 6) State that the customer has a right to direct the company not to use the customer’s CPNI or limit the use, disclosure, and access to the customer’s CPNI;
  - 7) State that the telecommunications company has a duty to comply with the customer’s limitations on use, disclosure of, and access to the information;
  - 8) State that CPNI includes all information related to specific calls initiated or received by a customer;
  - 9) Inform the customer that deciding not to approve the release of CPNI will not affect the provision of any services to which the customer subscribes;
  - 10) State that any customer approval for use, disclosure of, or access to CPNI may be revoked or limited at any time; and
  - 11) Be printed in both English and Spanish.

**R14-2-xx06 Additional Information Requirements for Customer Opt-Out Notice**

- A A telecommunications carrier may provide notification to obtain opt-out approval through, written, or electronic methods, but not orally (except as provided in section R14-2-xx07).
- B The contents of any such notification must comply with section R14-2-xx05 and with the following requirements.
  - 1) Telecommunications carriers must notify customers as to the applicable waiting period (minimum 30-days as provided in R14-2-xx03(C)) for a response before opt-out approval is assumed.
  - 2) The notice must include a disclaimer that an opt-out directive for customer proprietary network information does not prevent the company from making

telephone solicitation or telemarketing calls to the customer and does not prevent the company from including the customer's listed name, address, and telephone number in lists sold, leased or provided to other firms. This disclaimer is not required if the company's practice is to exclude customers who opt-out of customer proprietary network information use from use or disclosure for telemarketing purposes.

**R14-2-xx07. Notification Requirements for Obtaining Customer Approval for Limited One-Time Use of CPNI for Inbound and Outbound Customer Telephone Contact**

A telecommunications carrier may use oral notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether telecommunications carriers use opt-out or opt-in approval based on the nature of the contact.

**R14-2-xx08. Verification of Customer Opt-Out Approval to Use CPNI**

- A Verification of a customer's opt-out approval must be obtained within 180 days. Verification of the customer's approval shall be obtained in accordance with the procedures set forth below.
- B Verification of the customer's approval may be obtained through written, oral, or electronic methods. All verification methods shall be conducted in the same languages that were used in the initial notification and shall elicit at a minimum:
- 1) The identity of the customer;
  - 2) Confirmation that the person responding to the verification request is authorized to make CPNI available to the telecommunications company;
  - 3) Confirmation that the customer wants to make the CPNI release verification;
  - 4) The telephone numbers for which CPNI information release is authorized; and
  - 5) The types of service involved.
- C Written verification obtained by a telecommunications carrier shall:
- 1) Be a separate document having the sole purpose of authorizing a telecommunications company to use the customer's CPNI in accordance with this article;
  - 2) Be signed and dated by the customer authorizing the use of the customer's CPNI; and
  - 3) Not be combined with any inducement.
- D Electronic verification obtained by a telecommunications carrier shall:
- 1) Include electronically signed letters of authority;
  - 2) Be a separate document having the sole purpose of authorizing a telecommunications company to use the customer's CPNI in accordance with this article; and
  - 3) Not be combined with any inducement.
- E Oral verification obtained by a telecommunications carrier shall:
- 1) Be recorded; and
  - 2) Not be combined with any inducement.



- G. If a telecommunications company fails to obtain verification within 180 days of obtaining a customer's opt-out approval, the authorization to use, disclose, or permit access to that customer's CPNI is no longer valid. If verification from the customer is not received within 180 days as required, the company shall direct any entities (affiliates, joint-venture partners, or independent contractors) to whom it has released CPNI to stop using the CPNI until such verification is obtained.

**R14-2-xx09. Confirming a Customer's Opt-In Approval**

- A Each time a telecommunications company receives a customer's "Opt-In" approval to allow the telecommunications company make CPNI available to itself, its affiliates, independent contractors or joint venture partners, the telecommunications company must confirm in writing the change in approval status to the customer within ten days.
- B The written confirmation must be mailed or e-mailed to the customer.
- C The confirmation must be separate from any other mail from the telecommunications company.
- D The confirmation must clearly advise the customer of the effect of the customer's opt-in choice and must provide a reasonable method to notify the telecommunications company, including a toll free telephone number if the telecommunications company made an error in changing the customer's approval status.

**R14-2-xx010. Reminders to Customers of Their Current CPNI Release Election**

- A Telecommunications companies that have obtained opt-out or opt-in approval must notify customers of their current election regarding the treatment of their CPNI every twelve months.
- 1) In the case of opt-out approval, the notification must remind customers of their election to allow the company to:
    - a Provide their information to its affiliates that provide communications-related services to which services that customer does not already subscribe; and
    - b Provide their information to its joint venture partners and independent contractors that provide communications-related services.
  - 2) In the case of opt-in approval, the notification must remind customers of their election to allow the company to:
    - a Provide their information to its affiliates that provide communications-related services to which services that customer does not already subscribe;
    - b Provide their information to its joint venture partners and independent contractors that provide communications-related services; and
    - c Provide their information to its affiliates that provide non-communications-related services.
  - 3) In the case of express prior written opt-in approval, the notification must remind customers of their election to allow the company to:
    - a Provide their information to its affiliates that provide communications-related services to which services that customer does not already subscribe;
    - b Provide their information to its joint venture partners and independent contractors that provide communications-related services;

- c Provide their information to its affiliates that provide non-communications-related services; and
  - d Provide their information to specifically identified third parties as requested in writing by the customer.
- B The notice must not be mailed with any advertising or promotional information.
- C The notice shall not be included with the customer's bill.

**R14-2-xx11. Duration of Customer Approval or Disapproval to Disseminate the Customer's CPNI**

Any approval of the use of CPNI received by a telecommunications carrier will remain in effect until the customer revokes, modifies, or limits such approval.

**R14-2-xx12 Severability**

If any provision of this Article is found to be invalid, it shall be deemed severable from the remainder of this Article and the remaining provisions of this Article shall remain in full force and effect.

Original and 13 copies of the foregoing  
hand-delivered this 13<sup>th</sup> day of August 2004 to:

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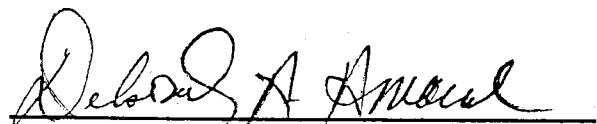
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