APPENDIX B

Qwest
1801 California Street, Suite 4900
Denver, Colorado 80202
Phone 303 672-2859
Facsimile 303 295-7049

Kathryn Marie Krause
Senior Attorney

April 12, 2002

Chairwoman Marilyn Showalter
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
Olympia, Washington 98504-7250

Re: Docket No. UT-990146 - Chapter 480-120 WAC, Telecommunications - Operations: Customer Information

Dear Chairwoman Showalter:

Qwest Corporation ("Qwest") respectfully submits these supplemental comments on the proposed Customer Information rules in Docket No. UT-990146, Chapter 480-120 WAC, Telecommunications - Operations. The Commission's April 5, 2002 released proposed rules reflect not only an objective to protect customer privacy but to recognize the free speech rights of both carriers and their customers. This shift in approach goes a long way toward rendering the Washington Utilities and Transportation Commission's ("Commission") rules more accommodating of the carrier-customer business relationship and better aligns them with federal rules. These are all positive changes.

However, there remain some areas where Qwest believes the Commission has proposed rules that could stifle and even foreclose legitimate activities occurring within the supplier-customer relationship in telecommunications and other industries. Additionally, even where the Commission's proposed rules pose no patent legal problem, in some instances they are more restrictive than necessary to protect the public interest. Providing greater flexibility would promote the best interests of customers and carriers alike and avoid unnecessary cost burdens for Washington consumers. Qwest focuses on these areas, and the specific rules, in these comments. Qwest will first review its legal concerns with specific proposals and then will suggest modifications that may avoid potential challenges by carriers, while accommodating the Commission's concerns.

An Opt-In Requirement for a Carrier's Use of Call Detail is Not Supported by Federal or State Law

Constitutional Analysis

In Qwest's March 21, 2002 submission, it provided the Commission with material on the nature of the "sensitivity" of CPNI. Scholars in the area of information privacy have concluded

that telecommunications information in the possession of carriers is not "sensitive" in the manner that information between a doctor and patient is or as financial information is considered sensitive. *See* Qwest's March 21, 2002 letter, Tab 7. Indeed, most telecommunications information, while appropriately treated by carriers as confidential, does not raise significant privacy concerns for the majority of a carrier's customer base. Those individuals that do feel strongly about restricting the use of such information (whether the CPNI be associated with a service like a 1FR or usage information such as call detail) can exercise choice and achieve appropriate control over the use of the information for marketing through opting-out.[1] This is all the law requires.[2]

The Commission's more narrow focus on a particular type of CPNI that it terms "call detail"[3] is thus a welcome development. However, when the Commission's proposed definition is

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[1] Even where a carrier has not communicated an "opt-out choice" to its customers, Qwest believes a carrier would honor an opt-out request because it would reflect an absence of customer approval under 47 U.S.C. § 222(c)(1) of which a carrier would need to be aware.

[2] As the Tenth Circuit noted, it is speculative (and Qwest argues counterintuitive) that persons who care a great deal about privacy generally or about privacy and CPNI in particular would fail to act to protect their own interests. *U S WEST, Inc. v. FCC,* 182 F.3d 1224, 1239 (10th Cir. 1999), *cert. denied,* 120 S.Ct. 2215 (June 5, 2000) (*"U S WEST v. FCC")* (the FCC simply "speculate[s] that there are a substantial number of individuals who feel strongly about their privacy, yet would not bother to opt-out if given notice and the opportunity to do so. Such speculation hardly reflects the careful calculation of costs and benefits that our commercial speech jurisprudence requires"). A governmental regime based on an assumption that such persons would fail to act is based on a paternalism the Supreme Court has rejected as inappropriate. *See 44 Liquourmart v. Rhode Island,* 116 S. Ct. 1495, 1507 (1996) (principal opinion); *Virginia State Bd. Of Pharmacy v. Virginia Citizens Consumer Counsel, Inc.*, 425 U.S. 748, 769 (1976).

[3] Proposed WAC 480-120-021(a) would define "call detail" as "[a]ny information that identifies or reveals for any specific call, the name of the caller, the name of any person called, the location from which a call was made, the area code, prefix, any part of the telephone number of any participant, the time of day of the call, the duration of a call, or the cost of a call." Neither the federal statute (47 U.S.C. § 222(h)(1)) nor the implementing federal rules (47 C.F.R. §§ 64.2003(c), uses this phrase. It is clear that some call detail information is included in the phrase "destination" and "amount of use." *See* the FCC's *CPNI Order*, 13 FCC Rcd. 8061, 8108-09 ¶ 61 ("[m]uch CPNI, however, consists of highly personal information, particularly relating to call destination, including the numbers subscribers call and from which they receive calls, as well as when and how frequently subscribers make their calls. This data can be translated into subscriber profiles containing information about the identities and whereabouts of subscribers' friends and relatives; which businesses subscribers patronize; when subscribers are likely to be home and/or awake; product and service preferences; how frequently and cost-effectively subscribers use their telecommunications services; and subscribers' social, medical, business, client, sales, organizational, and political telephone contacts.") (Emphasis added.) *See also id.* at 8109 ¶ 62. Qwest disagrees with the FCC's observations about the relationship of call detail to a carrier's identifications of persons or things for customer profile or marketing and is unaware of any federal factual evidence to support the comments by the FCC about the translation of calling information into other kinds of calling identification. *See* note 14, below.

coupled with another proposed rule requiring written customer approval before a telecommunications carrier can use "call detail," the Commission's proposed rules remain overbroad and legally infirm.[4]

As defined by the Commission, "call detail" includes not only fully dialed digits associated with terminating calls (3 or 7 or 10 or more digits – what the proposed WAC 480-120-021 terms "complete telephone number"), but also information associated with the dialing of NPA (area code) or NXX (central office) information, as well as the number of minutes associated with such calls, the location from which a call was made and the "amount spent" in calling the NPA/NXX. Thus, carriers would be prohibited, without express written customer approval, from even associating NPA/NXX information with "general calling patterns" such as "peak, off-peak, weekends" or the "amounts spent," unless those amounts are aggregated up to a "per month" amount spent. Additionally, without express written customer approval, carriers could not use information about calls answered or unanswered to individuals, even if that information contained no separate call detail with respect to the incoming call traffic.

What the Commission defines as "call detail" is truthful information lawfully generated and retained by carriers providing telecommunications services. Plainly, the communication of this type of information within a corporate enterprise is as much speech as telling an affiliate that "Susan has 7 lines – 3 more than she had last week and 6 more than she had last month." Use of this information by a carrier in the context of the individual associated with the call detail has not been demonstrated to be highly offensive across a broad base of telecommunications consumers, even though the information might be a reflection that Susan (a) is starting a highly lucrative "calling parlor" for those wanting to make overseas calls or (b) just needs a lot more telephone lines for reasons no one cares about. Moreover, the inclusion of this information in databases "used" for other than direct marketing purposes – such as information accumulated for modeling or other purposes that might be used to create marketing strategies for customers who do want to hear from telecommunications carriers – poses no "privacy threat" to any individual. Indeed, as the material submitted to the Commission previously demonstrates, all the above communications and potential information uses create benefits to consumers and businesses in the form of lower product development and marketing costs as well as the proliferation of products and services that can satisfy consumers' telecommunications and related service needs.

The Commission provides no analysis why it believes its opt-in proposal for the internal corporate use of call detail information appropriately balances customer privacy interests with legitimate carrier-customer expectations and relationships. Qwest is of the opinion that the rule, as proposed, remains subject to legal challenge.

A predicate question must be, "what is the substantial state interest the Commission is trying to protect with respect to Washington citizens?" There is no evidence of actual or substantial

[4] Proposed WAC 480-120-202 would prohibit a carrier's "**use**, disclos[ure] or . . . access to a customer's call detail information, unless the customer has given explicit written ('opt-in') approval" (emphasis added).

privacy invasions requiring Commission action of the sort it proposes. Qwest has committed not to use or share 7 or 10-digit call detail (whether associated with local calls, such as measured service, or toll calls) within its corporate enterprise for marketing purposes. Thus, there is no current demonstrable "privacy" concern or harm associated with its use of this information. While other carriers might not be willing to withhold use of this information, the fact that the information has been used in the past and has not raised or demonstrated privacy issues of any magnitude, compels the conclusion that the Commission could not prove a substantial privacy threat associated with internal use of call detail warranting this kind of government interference with First Amendment speech interests.

The Tenth Circuit actually addressed the matter of call detail, finding that Congress treated it as sensitive for purposes of Section 222.[5] Yet that same Court found that an *opt-out* CPNI approval regime most likely addressed any customer privacy concerns because individuals that objected to the use of such information could protect themselves by "opting-out." Qwest respectfully directs the Commission's attention to the following statement of the Tenth Circuit Court:

> In the context of a speech restriction imposed to protect privacy by keeping certain information confidential, the government must show that the dissemination of the information desired to be kept private would inflict **specific** and **significant harm** on individuals, such as undue embarrassment or ridicule, intimidation or harassment or misappropriation of sensitive personal information for the purposes of assuming another's identity. . . . The government never states it directly, but we infer from this thin justification that disclosure of CPNI information could prove embarrassing to some and that the government seeks to combat this potential harm.

U S WEST, 182 F. 3d at 1235 (emphasis added). The Tenth Circuit opinion does not provide support for the notion that telephone numbers dialed by a called party or associated with inbound

[5] "Given the sensitive nature of some CPNI, such as when, where, and to whom a customer places calls," Congress afforded CPNI the highest level of privacy protection under § 222." *U S WEST,* 182 F.3d at 1229, n. 1. (Note: the reference is to full dialing information.) The court was comparing § 222(c) with other subsections of § 222, such as the provisions dealing with aggregated information. The Court was commenting on the fact that, in the former case, customer "approval" was necessary before a carrier could use CPNI; whereas with respect to aggregate information, no such "high[ ] level of privacy protection" was provided for in the statute. Nor was such protection required in the case of subscriber list information (SLI), as the Court observed. By describing this legislative framework, the Tenth Circuit was not validating a substantial state interest in protecting people from disclosure of such information, particularly not if the disclosure were pursuant to customer approval. Nor did the Court say anything that would suggest that call detail information would warrant a different type of approval process than appropriate for individually-identifiable CPNI generally.

calls of a customer are so "sensitive" that the government could mandate an opt-in CPNI regime. Nor does Washington's statutory[6] or constitutional[7] structure support such government action.

A CPNI opt-in approval regime with respect to call detail cannot be sustained if it does not materially and directly advance a compelling government interest in privacy. The Tenth Circuit found that an opt-in CPNI approval regime failed this requirement because "[w]hile protecting against disclosure of sensitive and potentially embarrassing personal information may be important in the abstract, [it had] no indication of how it may occur in reality with respect to CPNI." *U S WEST,* 182 F. 3d at 1237.

Unless the Commission can demonstrate that carriers will release call detail to unaffiliated entities in a context that would be considered highly offensive to the average customer, it cannot require an opt-in approval mechanism. Since most carriers know only the numbers (digits dialed) and do not convert those numbers into more informative content (*e.g.*, names) when using the information for marketing purposes,[8] Qwest does not believe the Commission could lawfully sustain an opt-in rule with respect even to "complete telephone number" call detail.[9]

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[6] As Qwest pointed out in its March 21, 2002 correspondence to the Commission, Washington legislative action supports the concept that the information at issue must be "highly offensive" before it is even appropriate to begin using terms such as "right to privacy," "right" of privacy," "privacy, or "personal privacy." *Compare* RCW 42.17.255. *And see City of Tacoma v. Tacoma News, Inc.*, 65 Wn.App. 140, 144, 827 P.2d 1094, 1097 (1992). This is particularly the case since the interest in confidentiality, or nondisclosure of personal information, has not been recognized by the Washington Supreme Court as a fundamental right requiring utmost protection. *See O'Hartigan v. The Department of Personnel, et al*, 118 Wn.2d 111, 821 P.2d 44 (Wash. 1991) (citing to *Peninsula Counseling Ctr. v. Rahm,* 719 P.2d 926 (Wash. 1986), analyzing case under a "rationale basis" approach).

[7] Qwest is aware that the Washington Supreme Court has determined that individuals have a constitutionally-protected privacy expectation in the telephone numbers they dial *vis-à-vis* the government's unconsented-to interception of this information. State v. Gunwall, 106 Wn.2d 54, 68, 720 P.2d 808 (1986). (In this respect, the Washington Supreme Court reached a conclusion contrary to the United States Supreme Court in *Smith v. Maryland*, 442 U.S. 735 (1979).) However, in reaching its conclusion, the Washington Supreme Court differentiated between call detail information in the hands of a carrier and that information disclosed to the government. The Court stated that the fact that callers "necessar[ily] disclos[ed] to the telephone company . . . numbers dialed does not change the caller's expectation of privacy 'into an assumed risk of disclosure to the **government**.' . . . more significantly [within the carrier-customer relationship] the disclosure has been made for a limited business purpose and not for release to **other** persons for other reasons.") Id. at 67 (emphasis added). *The State of Washington v. Robert Alan Young*, 123 Wn.2d 173, 867 P.2d 593 (1994). *And see In the Matter of the Personal Restraint Petition of Mark Maxfield,* 133 Wn.2d 332, 340, 45 P.2d 196, 340 (Wa. 1997) (noting that individual's privacy interests in electric consumption records is minimal, akin to the toll records addressed in Gunwall).

[8] *See* note 14, below.

[9] Both the Ninth and Tenth Circuits are obligated to abide by Supreme Court precedent as established in *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 564-65 (1980) ("*Central Hudson*"). *See United Reporting Company v. Lost Angeles Police Dept.*, 146 F.3d 1133, 1139-

But even it if could, the restrictions on the use of call detail beyond the "complete telephone number" level invariably will be found unlawful.

The use of less than "complete telephone number" information by carriers (*e.g.*, NPA or NXX information, as well as associated billing information) for marketing or other purposes fails to raise a significant and material privacy concern as between the carrier that transports the calls and bills for them and the customer who receives the services. And beyond NPA/NXX/billed amount information, the fact that the term "call detail" includes the number of answered or unanswered calls seeks to extend privacy "protection" to information that few individuals would find highly offensive or threatening of "privacy." Indeed, the information may not contain any actual call detail at all.[10]

Qwest currently monitors some customer's network traffic patterns to advise customers of hourly, daily, weekly call volumes and calls answered/unanswered. This monitoring is sometimes done at the request of customers and sometimes prior to approaching them about particular services that could help them better manage their telecommunications services. The customers are almost always businesses, but could include home-based businesses. The Commission has made no demonstration that the use of this truthful, lawfully generated information is "sensitive" or should be burdened with an opt-in approval requirement before a carrier can use the information.

Moreover, depriving a carrier of the benefits of the use of this information adversely affects the "bundle of rights" the carrier has with respect to CPNI ownership.[11] Extrapolating from the previously-submitted "The Hidden Costs of Privacy: The Potential Economic Impact of 'Opt-In' Data Privacy Laws in California," by Peter A. Johnson and Robin Varghese, January 2002 (Attachment 13 to March 21st submission), at a minimum Qwest's search costs and compliance

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40 (9th Cir. 1998), *rev'd sub nom Los Angeles Police Dept. v. United Reporting Company*, 528 U.S. 32 (1999) (striking down a California statute on the grounds that, while it reflected a substantial government interest in protecting arrestees from the release of such information, the statute failed to materially and directly advance the government interest). The Ninth Circuit decision reflects an inquiry regarding whether speech not directly incorporated into commercial solicitations is commercial speech or some higher form of speech. 146 F.3d at 1136-37. The Supreme Court reversed the Ninth Circuit on the grounds that the government, as the entity in possession of the arrestee information, could determine to whom and under what circumstances the information should be disclosed. It did not address the matter of government interference with speech between private entities based on information lawfully in the possession of one of those entities.

[10] If the information indicated that 100 unanswered calls came from 303-355-6758, there would be information associated with call detail. Similarly, if the information said 100 calls came from 303-355 or merely from 355 central office, then the information would contain "call detail" under the Commission's proposed rules. But, the information could also be that on Tuesday, April 2, 2002, Customer x experienced 100 unanswered calls. That information does not even contain "call detail" in a literal sense but is included in the proposed definition.

[11] Qwest March 21, 2002 Letter at pp. 5-6.

costs would increase implementing the kind of opt-in rule the Commission anticipates. Qwest is unaware of any Commission cost/benefit analysis that would support its proposed actions.

Preemption Analysis

Finally, any Commission rules that restrict the use of call detail beyond that mandated by the FCC are preempted.

> State rules that likely would be vulnerable to preemption would include those permitting greater carrier use of CPNI than section 222 and our implementing regulations announced herein, **as well as those state regulations that sought to impose more limitations on carriers' use.** This is so because state regulation that would permit more information sharing generally would appear to conflict with important privacy protections advanced by Congress through section 222, whereas **state rules that sought to impose more restrictive regulations would seem to conflict with Congress' goal to promote competition through the use or dissemination of CPNI or other customer information.** In either regard, the balance would seemingly be upset and such state regulation thus could negate the Commission's lawful authority over interstate communication and stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. . . . We find, therefore, that the rules we establish to implement section 222 are binding on the states, and that the states may not impose requirements inconsistent with section 222 and our implementing regulations.

CPNI Order, 13 FCC Rcd. 8061, 8077-78 ¶¶ 18, 20 (emphasis added). Since reducing the flow of information associated with NPA-NXX use would conflict with articulated federal objectives articulated in the FCC's "total service approach,"[12] any Commission action to the contrary would be unlawful.

For all these reasons, the Commission should refrain from culling out "call detail" from other CPNI and should allow the general references in the CPNI definition to "destination" and "amount of use" (proposed WAC 480-120-021) to control carriers' uses of call detail information, like all other CPNI. This would mean the elimination of proposed rules WAC 480-120-021 (Definition of "Call Detail") and 480-120-202, as well as the modification of 480-120-205 to eliminate the phrase "with the exception of call detail".[13]

[12] *See* note 3, above.

[13] Elimination of the reference to "call detail" in WAC 480-120-200 would also be appropriate, but it is not critical.

At a Minimum, the Commission Should Limit Any Opt-In Requirement to Fully Dialed Calling Numbers

In no event should the Commission impose an opt-in requirement for anything other than the CPNI most likely to give rise to individual concern: fully dialed calling numbers (either 7 or 10 digits). It is that "call detail" that the FCC and the Tenth Circuit have identified as being potentially sensitive, *i.e.,* when, where, and to whom a customer places calls.[14]

A less restrictive manner of dealing with this call detail and marketing might be to prohibit carriers from matching terminating called-to numbers with names for marketing purposes.[15] The Commission might also limit its ban on use of call detail[16] to fully dialed telephone numbers, allowing use of NPA and NXX information. Qwest believes the Commission cannot prove that this latter type of information would be considered sensitive or private as between callers and their carrier such that an opt-in regulation would be upheld against a constitutional challenge. A rule along the lines suggested by Qwest would read:

> "Call detail" means fully-dialed call termination information (this may be 3 digits, or 7 digits or 10 digits or more) from a caller to a terminating number. Dialed information reflecting less than the complete telephone number (*e.g.,* area code (NPA) or central office (NXX) information) is not call detail."[17]

Some Proposed Rules Would be Improved Through Greater Flexibility

The Commission's proposed rules require written confirmation be provided to customers regarding their CPNI approval decisions. Proposed WAC 480-120-207(5)(e), 480-120-209(3)(n) and 480-120-211(1). As Qwest stated in the March 22nd Workshop, carriers and customers should be permitted greater flexibility regarding CPNI approval confirmations. This is particularly true since there is no evidence that the benefit of such confirmations outweigh the costs. Nor is there any demonstration that the costs are appropriate in the first instance given the

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[14] This is actually not an accurate statement since most carriers will not know "to whom" a customer places a call without working through some kind of reverse directory or search engine. These kinds of databases are used when individuals inquire about "who" they may have called when a number shows up on their bill which they do not recognize. But, to Qwest's knowledge, carriers do not use these search engines when using CPNI for marketing. And, even if such search engine were used, the most that could be discerned would be the billing name associated with the terminating number, not necessarily "whom" the caller was contacting or communicating with.

[15] Qwest does not concede that such regulation would be constitutional. However, in efforts to work with the Commission cooperatively, this type of regulation might not be challenged by carriers and might accommodate the Commission's concerns.

[16] As the record demonstrates, an opt-in requirement essentially operates as ban on CPNI use since affirmative approvals cannot be gotten in sufficient numbers to allow a normal business operation.

[17] Again, Qwest does not concede the lawfulness of such rule. *See* note 15, above.

"harm" of not accurately recording a customer's CPNI "choice". The "harm" is that an individual receives an unwanted marketing solicitation. This "harm" is not a significant privacy invasion and cannot support a costly regulatory "protective" mechanism. Furthermore, customers can request that they not receive solicitation calls.

When confirming CPNI opt-outs after its mailing of the December, 2001 insert, Qwest utilized a variety of media, including outbound recorded calls, mailings and electronic mail. Qwest understands that an electronic confirmation would constitute a "written" one for purposes of the rule. Thus, the primary problem with the rules as proposed is that a verbal or oral notice is not permitted. The Commission should permit customer confirmations accomplished through any reasonable mechanism. A modification to WAC 480-120-207(5)(e) and 480-120-209(3)(n) along the lines suggested by Qwest would read:

> "A statement that the customer should expect to receive confirmation within thirty days of the directive and suggest that the customer call the company if the confirmation is not received by this time."

A modification to WAC 480-120-211(1) along the lines suggested by Qwest would read:

> ""Each time a company receives a customer's "opt-out" directive, the company must confirm the change in approval status to the customer within thirty days. The confirmation must include a summary of the effect of the customer's opt-out choice and identify the method by which a customer can notify the company if the company made an error in changing the customer's approval status."

Two other matters addressed by the proposed rules require brief comment. Proposed WAC 480-120-209(3)(d) requires that a CPNI notice to consumers "specify the names of entities, including affiliates" that may receive CPNI. Qwest respectfully suggests that this requirement is unnecessary to protect the public interest. In fact, depending on the "name" of the affiliate, the name may provide less helpful information to the customer than a description. For example, if Qwest said it shared CPNI with "Dex" that might communicate no meaningful information to some customers. But, if the notice said "with its directory publishing affiliate" (or something along those lines) more understandable information would be conveyed. And, in some cases, a carrier may decide a combination of information is the best -- some names and some descriptions. Finally, it might create a very tedious notice if a carrier were to list all affiliates with which it might share CPNI.[18] Carriers should be able to advise that they will share CPNI with affiliates and then conclude by stating "such as those affiliates that provide ABC services and XYZ services." It should be sufficient that carriers "clearly identify those companies or types of companies that might share CPNI" with the noticing carrier. A modification to WAC 480-120-209(3)(d) along the lines suggested by Qwest would read:

[18] The proposed rule does not state, and Qwest does not read it as requiring, the names of agents or contractors who may receive CPNI under proposed WAC 480-120-205(1) ("agents that are contractually bound to use the information only for the purposes permitted by this rule").

> "The notice must disclose if the CPNI can be used, disclosed or accessed by any entity or person other than the company providing the notice. If CPNI is disclosed beyond the company providing the notice, the notice must identify whom the CPNI is shared with and must include a general description of the business or services of each affiliate provider. For example, a notice may state: 'CPNI will be shared with our directory publishing affiliate and our affiliate that provides customer premises equipment.'"

The same rule requires that "each purpose for which" CPNI can be used be identified in the notice. WAC 480-120-209(3)(e). As discussed in the March 22nd Workshop, this language is capable of various interpretations. Qwest proposes the rule be amended to say "types of purposes" for which CPNI can be used. This would allow for explanations along the lines reflected in the rules (*e.g.*, "initiate," "render," "coordinate," "facilitate," "bill," "collect," etc.) and might include language such as "for product design and development, marketing, fraud protection," etc. Carriers would not be subject to liability if they failed to list "every" possible purpose ("each purpose") so long as the purpose for which the CPNI is used fits fairly into one of the disclosed categories of use. A modification to WAC 480-120-209(3)(e) as suggested by Qwest would read:

> "The notice must describe the types of purposes for which private account information can be used, disclosed, or accessed and specifically disclose whether the CPNI can be used to market services to the customer. For example, a notice may state that CPNI will be disclosed to an affiliate for product design and development and marketing."

Conclusion

Qwest uses CPNI, within the confines of all applicable laws, to promote and improve its business relationship with customers and has done so for many years without any abuse. Qwest's responsible use of CPNI creates advantages through productivity gains and operational efficiencies that ultimately benefit its customers. CPNI use allows more meaningful conversations with customers about their service needs and interests, and these operational efficiencies facilitate lower prices for products and services.

Qwest values its customers and respects their judgment with regard to the use of CPNI. Qwest is confident that an opt-out CPNI approval regime would provide customers with ample opportunity to exercise their choice regarding CPNI use. In all events, since Qwest shares customer account information on a very limited basis at this time, there is no need for radical changes to the current Commission rules nor state regulatory action that materially departs from the federal regulatory regime, even assuming such changes were permissible.

If you have further questions, I would be happy to discuss them with you or your staff at your convenience. I can be reached at (303) 672-2859.

Sincerely,

Theresa Jensen
for Kathy Krause

cc: Commissioner Patrick Oshie
Commissioner Richard Hemstad
Carole Washburn