Appendix E

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996:	)	CC Docket No. 96-115
	)	
	)	
Telecommunications Carriers' Use of Customer Proprietary Network Information And Other Customer Information	)	

DECLARATION OF MAURA BREEN

1. My name is Maura Breen. I am the Senior Vice President and Chief Marketing Officer of Retail Markets ("Retail Markets") for Verizon Services Corporation ("VSC"). I submit this declaration in support of Verizon's Petition for Reconsideration in the above captioned matter. I am responsible for coordinating and managing the development and marketing of Verizon's products and services for the residential and small business markets for several Verizon entities.

2. VSC provides marketing and other services to Verizon's local service operating telephone companies ("local operating companies"), long distance affiliates, Verizon Wireless, and Verizon On-Line. This includes advertising, direct mail marketing, and telemarketing. It also performs other services for these companies, such as systems development and billing.

3. Although Verizon long distance companies outsource certain billing services, generally Verizon's local operating companies and long distance affiliates use VSC almost exclusively for all available services that VSC provides. In addition,

Verizon On-Line and Verizon Wireless use VSC to execute joint marketing campaigns with either the local operating companies or long distance affiliates.

4. By centralizing marketing efforts among different Verizon affiliates, VSC is able to deliver cost-savings to the various entities so that they do not have to duplicate efforts or staff. Having one entity responsible for most companies' marketing efforts also facilitates the implementation of national or regional marketing of services, as well as bundled offerings that combine more than one type of service. Consumers benefit from the economies of scale and the additional discounts available through the bundling and packaging of services between different Verizon affiliates.

5. The use of customer proprietary network information ("CPNI") is critical to the ability to market new products and services to the most likely buyers within existing customer bases. Verizon uses CPNI on a nationwide basis both to gain an understanding of which products and services or service bundles our customers may be interested in and to market those products and services to particular customers who are likely to benefit from them.

6. No distinction is currently made between interstate and intrastate CPNI in the way CPNI is compiled and managed within the existing customer service, operations support, marketing, and billing systems of Verizon. Rather, CPNI historically has been maintained on a customer account basis and on a service/product basis within the account. This would include the quantity and type of products and services subscribed to by the customer, how much and when the customer uses those products, and the customer's billing records.

7. Verizon operates pursuant to the federal CPNI rules set forth in the *Third Report and Order and Third Further Notice of Proposed Rulemaking*, FCC 02-214 (rel. July 25, 2002). In particular, Verizon utilizes the total services approach set by the Federal Communications Commission's ("FCC" or "Commission") for "in-bucket" marketing – *i.e.*, marketing services and products of the same type already subscribed to by customers, or that are used in or necessary to the provision of the same type of services. It uses the opt-out procedures outlined in federal rules to obtain customer approval to use CPNI for "out-of-bucket" marketing – *i.e.*, marketing communications-related products and services of a different type than those already subscribed to by the customer. Verizon implemented national opt-out procedures and sent opt-out notices to most of its mass market customer base during the first half of 2002, after the Commission's *Clarification Order and Second Further Notice of Proposed Rulemaking*, 16 FCC Rcd 16506 (2001). Prior to that time, Verizon had been operating under an opt-in notice and consent arrangement for all CPNI-based out-of-bucket marketing.

8. Verizon has initiated a variety of national marketing campaigns relying upon the federal CPNI rules. Under the federal CPNI total services approach, Verizon has used CPNI to identify the type of services customers subscribe to and to market in-bucket services and products to those customers. For example, Verizon used "local" CPNI to identify residential local service customers that subscribe to value added services (such as caller identification or call waiting), and would be better served with Verizon's Local Package plan, which provides a discount from the rates that are charged when these services are sold separately. Similarly, by using

CPNI, Verizon was able to identify customers with high toll usage who may be better served by Verizon's Local Package Plus plan, which includes unlimited toll calls.

9. For Verizon customers who may already subscribe to different type of services, the federal CPNI total services approach rules also facilitate the target marketing of bundled packages and other services that would be convenient to customers. For example, Verizon companies offer a ONE BILL® program, which allows customers that subscribe to Verizon's local and wireless services to have their Verizon Wireless billing included on their Verizon local service bill. Under the federal CPNI rules, Verizon can use CPNI to identify customers who use both Verizon Wireless and Verizon local service, and who might benefit from the ONE BILL® program.

10. In addition, Verizon implemented opt-out consent following the federal guidelines and was able to use customers' CPNI to identify product and services that may be of a different type than the customer already subscribes to. For example, Verizon recently launched a nationwide campaign in most of its states to introduce various Veriations™ packages, which allow customers to receive discounts when they combine several Verizon services, such as local and regional calling, long distance, wireless service, and Internet access service. Again, federal rules permit Verizon to use CPNI to identify customers who already use these Verizon services and who might be the most interested in the cost savings these packages offer.

11. Prior to the Commission's Clarification Order, Verizon was required to obtain opt-in consent before it could use CPNI for the marketing of out-of-bucket services. Because we have found that it is extremely difficult and costly to obtain opt-in consent from mass market customers, Verizon had to utilize less reliable and more costly demographic customer data purchased from third parties in an attempt to try to identify customers who may benefit from additional Verizon products and services. This caused a significant increase in marketing costs. Because these lists were less reliable as a predictor of what products and services a customer would be interested in, Verizon had to market to a wider number of potential customers, and the "take rates" – *i.e.*, the percentage of customers that would actually subscribe to a service offering as a result of a marketing campaign – were significantly lower.

12. Not being able to use CPNI and instead relying on demographic data supplied by third parties increases costs, both in terms of the aggregate costs of customer acquisition and the increase in unproductive marketing efforts (*e.g.*, contacting consumers for whom the product is inappropriate). In addition, because marketing without CPNI will inevitably be less targeted, Verizon will contact many more customers who are not interested in Verizon services, which inconveniences these customers and may harm Verizon's goodwill. The costs in terms of lost business opportunities and loss of goodwill due to inappropriate customer contacts are impossible to reduce to a particular dollar sum. Moreover, because the marketing will be less targeted, Verizon will have less

communication with those customers who are most likely to be interested in Verizon's services and products.

13. Because there is no assurance that any inconsistent state CPNI rules will be preempted by federal regulation, as part of the migration to opt-out and our ongoing CPNI compliance activities, Verizon has been involved in analyzing how it can market its services and be consistent with federal rules as well as any existing and proposed state specific CPNI rules. In the case where states have or are considering implementing CPNI rules that conflict with the federal rules, these analyses include a cost versus benefit study to determine whether using CPNI in the state is economically justifiable. This is necessary because there are significant additional costs associated with complying with more stringent state CPNI regulations.

14. In evaluating situations where states have or are proposing more stringent CPNI rules than the federal standards, it has become clear that given the substantial costs and compliance complexities associated with complying with two different sets of rules in any particular state, Verizon has at this point decided that it would have to operate under the more restrictive state rule. This may require Verizon to temporarily abandon the use of CPNI in the state in order to take steps to meet the new state compliance requirements. Alternatively, if the rules are particularly restrictive, such as those currently proposed by Washington, which require opt-in consent to use all or portions of CPNI for any activity beyond the provision of the service, Verizon may abandon altogether the use of CPNI for marketing. As explained in more detail below, that is because experience has shown that it is not

economically justifiable for Verizon to develop and introduce the different procedures, systems, or marketing campaigns within a state based on CPNI consent, notification and/or compliance rules that are significantly different than federal requirements.

15. As an initial matter, it is not practical or economically justifiable for Verizon to divide CPNI into separate interstate and intrastate components and to have each part governed by a different rule. Many of the products and services that Verizon markets are jurisdictionally mixed. And even products or services that jurisdictionally fall within one category (interstate or intrastate) often have both interstate and intrastate components. For example, long distance service can be interstate or intrastate depending on the origination and destination. To separate interstate from intrastate components of CPNI for a particular state, the call detail for each long distance call would need to be analyzed to determine its origin and destination. In addition, caller identification and other call management services carry both interstate and intrastate CPNI, because they identify calls originating from both inside the same state as the customer and outside the state. Another example is private line services. While private line services may be purchased under interstate and intrastate tariffs, the private line may carry both interstate and intrastate traffic.

16. Moreover, attempting to create separate federal and state CPNI standards in the same jurisdiction would require more than just separating interstate CPNI from intrastate CPNI. Verizon would have to institute state specific methods and

procedures and system safeguards to deal with the compliance requirements specific to the state and the intrastate services.

17. Experience has shown that states tend to develop a wide variation of compliance rules. Thus, Verizon potentially would have to implement not just two separate sets of standards and compliance procedures (one for federal rules and one for state), but several. It would be extremely difficult to insure compliance with all the potentially different, but overlapping, state and federal rules. Because Verizon companies centralize marketing services in one entity, this exacerbates the problem of trying to coordinate separate federal and state CPNI requirements.

18. When states implement regulations that are not consistent with federal CPNI standards, this adds significantly to the costs and burdens of marketing, and has the potential of creating confusion for consumers. For example, if states impose customer approval standards that are more stringent than the federal total services approach (which allows carriers, without notice to the customer, to use CPNI to market offerings related to the services to which the customer already subscribes), this would impose significant burdens and costs on Verizon. Thus, if these states require opt-out approval before using CPNI for such marketing, Verizon would have to create and mail notices that are not required under the federal rules. Issuing different notices (federal and state) to the same customer in order to obtain approval for use of the same CPNI will cause customers to become confused and annoyed.

19. If states require opt-in approval from a customer before a carrier can use CPNI to market out-of-bucket communications-related services to its customers, this

inhibits Verizon's ability to market to these customers. Our experience has shown that obtaining opt-in consents from the mass market is extremely costly and not effective. For that reason, if a state has an opt-in requirement, Verizon will have to halt CPNI-based marketing campaigns for out-of-bucket services in that state, even if the campaign is being implemented in states that operate under the federal opt-out rules. In such a case, Verizon either will have to rely on the more expensive types of marketing, such as using information purchased from third parties for target marketing, or rely solely on non-targeted marketing, such as mass mailings and general advertising on radio or television.

20. For example, existing Washington rules require opt-in for out-of-bucket marketing. Because of these rules, Verizon has not moved forward with its national opt-out program in that state. In particular, Verizon has been unable to use CPNI to target market Veriations™ packages to Washington customers, although those packages were developed to be marketed on a nationwide basis. Similarly, in California, the state is considering adoption of a proposed Consumer Bill of Rights that would require opt-in approval for use of CPNI to market out-of-bucket services. If adopted, Verizon would have to withdraw its use of CPNI in that state for its out-of-bucket marketing.

21. I understand that some states already are considering implementing rules that would require a more stringent process for obtaining customer approval for use of in-bucket services than the total services approach set forth in federal CPNI rules. For example, Washington has proposed requiring carriers to obtain opt-in approval from customers for most marketing uses of certain types of CPNI. This

creates great uncertainty for the development of our marketing plans in those states.

22. Another issue in trying to deal with different state regulations is that states may have a definition of CPNI that differs from the federal standard. For example, I understand that California is proposing a definition of "Confidential Subscriber Information" which would cover more expansive types of information than the CPNI definition set forth in Section 222 and the FCC's rules. *See Order Instituting Rulemaking on the Commission's Own Motion to Establish Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities*, CPUC Rulemaking 00-2-004 (Feb. 3, 2000). I also understand that Washington has proposed rules that would require opt-in approval for any marketing use of "call detail" information, a portion of CPNI that includes "[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." Thus, the proposed rule would require carriers to obtain opt-in approval even to use the "call detail" portion of CPNI to market in-bucket products and services, which is contrary to the federal total services approach. The proposed Washington rules would allow other CPNI (*i.e.*, all CPNI other than "call detail") to be used only with opt-out approval, regardless of whether the CPNI was being used to market in-bucket or out-of-bucket products and services. *See* Washington Utilities and Transportation

Commission, *Proposed Customer Information Rules, Docket No. UT-990146, Chapter 480-120 WAC, Telecommunications-Operations.*

23. As noted above, CPNI information is maintained at the account and service level. It would be extremely difficult and costly to identify intrastate "call detail" information, as defined by Washington's proposed rules, from other CPNI. Segregating portions of Washington CPNI from the CPNI of other states and subdividing it into "call detail" and other segments would impose a substantial economic and logistical burden on Verizon. Practically speaking, it would be prohibitively expensive for Verizon to attempt such a disaggregation of its CPNI accounts. As such, if Washington were to impose such regulation, it would have the practical impact of requiring opt-in consent for all types of CPNI. And because the opt-in requirement applies to "call detail" information regardless of the category of products and services being marketed, the proposed Washington rules essentially would require opt-in consent for any use of CPNI, whether it is used for marketing in-bucket or out-of-bucket products and services. Verizon has determined that if the Washington CPNI rules became effective, it immediately would have to suspend all outbound marketing in Washington that relies on CPNI. In addition, because of the costs that would be associated with attempting to comply with the proposed Washington CPNI rules, if the new rules were to go into effect, Verizon likely would not be able to use CPNI for any marketing in that state.

24. Generally speaking, state regulations that conflict with federal CPNI rules restrict Verizon's ability to market to customers. Indeed, even before a state implements

conflicting regulations, a state's *proposed* CPNI rules may cause (and in some cases have already caused) Verizon to suspend certain types of marketing in that state. For example, Verizon is planning to send out new opt-out notices in a number of states to new customers who were not included in the initial opt-out mailing earlier this year. CPNI could then be used for out-of-bucket marketing purposes for customers who do not opt-out. These notices and the subsequent marketing campaigns are being delayed in California, for example, because of the uncertainty caused by the rules being considered by the California Public Utilities Commission, which is considering implementing an opt-in requirement for out-of-bucket marketing. *See Order Instituting Rulemaking on the Commission's Own Motion to Establish Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities*, CPUC Rulemaking 00-02-004 (Feb. 3, 2000). Because of the legal and regulatory uncertainty posed by the proposed California rules, plans for sending opt-out notices to new customers in California are currently on hold, thus delaying future targeted CPNI-based marketing plans to customers in that state.

25. As more states begin to consider proposing their own versions of state specific CPNI rules, there may come a time when, because of diminishing returns, Verizon will have to reevaluate the economic benefits of using CPNI for marketing purposes when compared to the cost and complexity of compliance. At some point, it may be more cost effective to rely entirely on third party databases or general advertising on a national level, rather than trying to comply with numerous different state rules regarding CPNI. This will lead to higher marketing

costs and, because it will be difficult to identify what services our customers may be interested in, an increase in unsolicited marketing and general advertising. In addition, more restrictive state CPNI rules limit Verizon's ability to target market those customers who are likely to be the most interested in Verizon services, thus restricting Verizon's speech and leading to less consumer choice.

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.

Maura Breen

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Executed on October 18, 2002