

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-115
Telecommunications Act of 1996)	
)	
Telecommunications Carriers' Use)	
of Customer Proprietary Network)	
Information and Other Customer)	
Information;)	
)	
Implementation of the Non-Accounting)	CC Docket No. 96-149
Safeguards of Section 271 and 272 of the)	
Communications Act of 1934, As Amended)	
)	

**COMMENTS OF SPRINT CORPORATION
ON PETITIONS FOR RECONSIDERATION**

Sprint Corporation ("Sprint"), on behalf of its operating subsidiaries, hereby respectfully submits these comments in support of the petitions filed by Verizon and AT&T Wireless Services ("AWS") and in opposition to the petition of the Arizona Corporation Counsel (ACC) seeking reconsideration of the Commission's *Third Report and Order* (FCC 02-214), 17 FCC Rcd 14860 (2002) (*Third Report*) issued in the above-captioned proceeding.¹

¹ The Commission's *Public Notice* (Report No. 2586) dated December 3, 2002, listing the Petitions for Reconsideration of the *Third Report* that had been filed, was published in the Federal Register on December 12, 2002. 67 FR 76406. The Federal Register's notice, however, erroneously set forth December 25, 2002 as the filing date for pleadings on the petitions. Under Section 1.429(e) of the Commission's Rules, 47 CFR §1.429(e), parties have 15 days from the date of Federal Register publication in which to file responsive pleadings. This means that the pleadings are due on December 27. See 47 CFR §1.4(b)(1).

A. The Commission Should Preempt Inconsistent State Regulation Of CPNI.

Both AWS and Verizon ask that the Commission reconsider its decision regarding preemption of inconsistent state regulation of CPNI. Specifically, AWS requests that the Commission reinstate the “presumption that inconsistent state customer proprietary network information (“CPNI”) requirements will be preempted.” AWS Petition at 1. Verizon asks the Commission to go further and “make clear that all state regulations of customer proprietary network information (“CPNI”) that are inconsistent with the federal CPNI rules, including any state rules that adopt an opt-in requirement, are preempted.” Verizon Petition at 1. Sprint would prefer that the Commission adopt Verizon’s approach; however, granting the relief requested by AWS is acceptable. In either case, the Commission would send a strong message that the Commission, consistent with its statutory responsibilities, will not permit any state to adopt regulations governing a carrier’s use of CPNI that effectively preempts the CPNI rules adopted by the Commission.

Sprint recognizes that a decision by this Commission on whether to exercise its preemption authority often requires the resolution of difficult issues. However, preempting inconsistent state regulation of CPNI, or at least reinstating the presumption that inconsistent state regulation will be preempted, is not a close issue. In its *Second Report and Order* in this proceeding, the Commission concluded that its authority under Section 222 “extends to both interstate and intrastate use and protection of CPNI and other customer information... .” 13 FCC Rcd 8061, 8074 (1998). It noted that “Section 222 expressly defines CPNI as including, among other things, information contained in the bills pertaining to telephone exchange service or [intrastate] telephone toll service received by a customer of a carrier,” *id.* at fn. 67 (internal ellipses, citation and emphasis omitted), and went on to observe that the reference to telephone

exchange service “expressly ... extend[s] the scope of section 222 to intrastate matters.” *Id.* at 8078.²

The Commission also has recognized that inconsistent state regulation of CPNI, even if confined to the provision of intrastate telecommunications services “would negate the Commission’s exercise of its lawful authority because regulation of the interstate aspects of the matter cannot be severed from regulation of the intrastate aspects.” *Id.* at 8075. This is so, the Commission explained, because “state CPNI regulations that are inconsistent from state to state” could “interfere greatly” with the ability of carriers whose “operations are regional or national in scope...to provide service in a cost-effective manner” by “disrupt[ing] [the] interstate service marketing” of such carriers. *Id.* Thus, the Commission found “that the rules [it] establish[ed] to implement section 222 are binding on the states, and that the states may not impose requirements inconsistent with section 222 and [the Commission’s] implementing regulations.” *Id.* at 8078.

The Commission affirmed its conclusions on preemption in its 1999 *Reconsideration Order* in this proceeding, 14 FCC Rcd 14409, 14465-66 (1999). Of equal significance, the Commission neither discussed the issue of preemption in its *Clarification Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 16506 (2001), nor asked the parties for comments on whether it should modify its finding barring the states from adopting regulations governing the carriers’ use of CPNI that were inconsistent with the Commission’s regulatory paradigm implementing Section 222. Given such precedent, the Commission’s decision to modify its preemption standard by removing the presumption that state “CPNI requirements that are more

² Nothing in the Commission’s CPNI rules limits their applicability to interstate services only. On the contrary, the rules apply to CPNI as defined in Section 222.

restrictive than those adopted by the Commission ... would be vulnerable to preemption,” 17 FCC Rcd at 14891 is not only unexplainable but is contradicted by the Commission’s explicit acknowledgment in the *Third Report* “that ‘the potential impact that varying state regulations could have on carriers’ ability to operate on a multi-state or nationwide basis’ cannot be taken lightly.” AWS Petition at 4, citing 17 FCC Rcd at 14871.

Verizon points out that the Commission’s failure to preempt has “emboldened” individual states to seek to impose “new CPNI rules that are more restrictive than, and inconsistent with, the Commission’s regulations.” Verizon Petition at 4. As examples, Verizon has supplied the Commission with copies of the CPNI rules then being considered by the California Public Utilities Commission (“CPUC”) and the Washington Utilities and Transportation Commission (“WUTC”).³ And, it is clear that both proposals are “expressly designed to be an exercise in reverse preemption and to override the federal statute and the FCC’s rules.” Verizon at 4.

Indeed, although the Commission has explained that the states’ ability to regulate CPNI is confined to “the use of CPNI for intrastate services,” 17 FCC Rcd 14891, neither the CPUC nor the WUTC so limit the reach of their CPNI rules. This is hardly surprising since the interstate

³ The WUTC has now adopted its CPNI proposals. *In the Matter of Adopting and Repealing: WAC 480-120-201 through WAC 480-120-209 and WAC 480-120-211 through WAC 480-120-216, Relating to Telecommunications Companies -- Customer Information Rules*, Docket No. UT 990146 General Order No. R-505 (November 7, 2002) (“*WUTC Order*”). Verizon is currently challenging the lawfulness of the *WUTC Order* in federal district court for the western district of Washington. *Verizon Northwest et al. v. Marilyn Showwalter, et al.*, Case No. CO2-2342, filed November 21, 2002. In any event, with the adoption of CPNI rules by the WUTC, the Commission now has before it “specific state regulations” which the Commission has repeatedly insisted it needs to determine whether to “exercise [its] preemption authority.” *Second Report and Order*, 13 FCC Rcd at 8077.

and intrastate aspects of CPNI cannot realistically be separated into their jurisdictional components. *Second Report and Order*, 13 FCC Rcd at 8075. As Verizon points out, because CPNI is collected and sorted on an individual customer basis without determining whether the CPNI is derived from intrastate or interstate services, “it would be practically infeasible, if not virtually impossible, for carriers to implement [an interstate/intrastate] jurisdictional distinction.” Verizon Petition at 10. Similarly, “[w]ireless carriers do not categorize customers as interstate or intrastate and would be unable to do so for the purpose of determining the lawful use of CPNI.” AWS at 5-6. Thus, absent Commission preemption of inconsistent state regulation of CPNI, all carriers, both wireline and wireless “will be forced to comply with the most restrictive state CPNI regulations in disregard of the delicate balance the Commission has struck between competitive and consumer privacy interests.” Verizon Petition at 11. The Commission’s jurisdiction over CPNI as set forth in Section 222 would thereby have been undermined, if not totally negated.

Moreover, by failing to preempt or presumptively preempt inconsistent state regulation of CPNI, the Commission delegates to the states the unfettered discretion to adopt rules that “will violate carriers’ First Amendment rights.” Verizon Petition at 13. Such delegation of discretion constitutes an infringement on the free speech rights of carriers, *id.* at 21, and provides additional justification, as if more were needed, for preempting inconsistent state regulation of CPNI. *See also* AWS at 5 (“...the Commission’s own interpretation of the First Amendment’s application in the CPNI context provides a strong reason to ensure that states do not impose undue burdens on carriers’ commercial speech).

B. Arizona Corporation Counsel’s Requested Modifications To The Commission’s Rules Governing The Release Of CPNI Are Unjustified And Unnecessary.

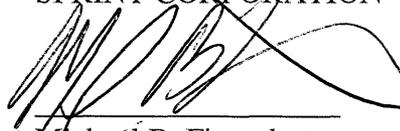
The Arizona Corporation Counsel (“ACC”) has filed a petition asking the Commission to “clarify and/or reconsider its policies” regarding a carrier’s release of customer proprietary network information (“CPNI”) to “any unrelated third parties” so as “to ensure that no unintended or inappropriate disclosures of private customer account information occur.” Petition at 3. The ACC appears to be concerned that “even under an ‘opt-in’ policy,” a carrier’s customer “has no knowledge of who will receive his or her proprietary information.” *Id.* The main problem with ACC’s request here is that ACC does not define what entities it would have the Commission include within its “unrelated third party” category. The vagueness of the term “unrelated third party” suggests that it would include carrier’s agents, independent contractors and joint venture partners providing communications-related services. Yet, ACC has provided no justification for reversing the FCC’s decision allowing a carrier to share the CPNI of its customers who have not exercised their right to opt-out with these types of entities. On the other hand, if “unrelated third party” is limited to those entities that do not provide a communications-related service, the end user exercising reasonable diligence is fully protected from unwanted disclosures since under the Commission’s Rules, the carrier has to obtain the customer’s opt-in consent before it releases its customer’s CPNI to any party (related or non-related) not providing communications-related services. Thus, if the customer believes that the “opt-in” notice of the carrier does not adequately disclose the identities of the parties to whom the carrier intends to disclose the customer’s CPNI, the customer need not give her opt-in consent. Moreover the FCC’s informal and formal complaint processes are available to those customers who believe

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they have been misled by a carrier into giving their opt-in consent. For these reasons, ACC's petition should be denied.

Respectfully submitted,

SPRINT CORPORATION

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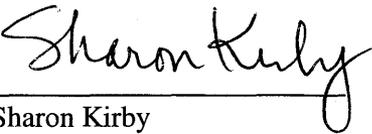
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December 27, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Sprint Corporation was delivered by electronic mail or U.S. First Class Mail, postage prepaid, on this 27th day of December 2002 to the parties listed below.


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