

News Release

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CPI Asks U.S. Supreme Court to Hear Case on Consumer Privacy

Washington — The Competition Policy Institute (CPI) today asked the United States Supreme Court to review a Court of Appeals decision that struck down rules protecting the privacy of sensitive customer information collected by telephone companies. The information, known as “customer proprietary network information” (CPNI), is sensitive data collected by telephone companies in the course of providing phone service. It includes the identity of parties called by a customer, as well as the time, date and duration of such calls.

“This is an important case in the legal tug-of-war between consumers’ privacy rights and the rights of businesses. By striking down these privacy rules, we think the 10th Circuit court improperly expanded the free speech rights of commercial businesses at the expense of consumer privacy. Congress’s intent to protect consumer privacy in the midst of the exploding information age is unmistakable,” said CPI President Ron Binz. “Privacy is critical to telephone consumers; it is important that the nation’s highest court now consider this issue.”

The CPNI rules were adopted by the Federal Communications Commission (FCC) in 1998 to implement a provision in the Telecommunications Act of 1996. This provision requires telephone companies to obtain a customer’s approval before using CPNI internally for marketing purposes or disclosing or selling the sensitive information to outside businesses. The FCC’s rules had required carriers to obtain the affirmative consent of its customers before using or disclosing CPNI.

Bell Operating Company USWest appealed the FCC’s rules, arguing that they infringed on the company’s First Amendment rights of free speech. USWest argued that it should not be required to obtain customers’ affirmative approval, but instead should be able to use or disclose CPNI unless the customer “opts out” by objecting to its use. On a 2 to 1 vote, a panel of the 10th Circuit court agreed with USWest, finding that the FCC’s rules limited commercial free speech.

CPI subsequently asked the 10th Circuit court to reconsider its decision to strike down the FCC’s CPNI rules. In November 1999, on a 6 to 5 vote, the full 10th Circuit declined to reconsider its decision, setting the stage for today’s appeal to the Supreme Court.

CPI’s Petition for Writ of Certiorari was prepared by attorneys Glenn B. Manishin, Stephanie A. Joyce and Janet Fitzpatrick of the Washington law firm Patton Boggs LLP. Copies of the petition are available on CPI’s website.