

Abstract

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U.S. West, Inc. v. FCC: Exposing the Deficiencies in Government Attempts to Protect Customer Privacy

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This Casenote examines the Tenth Circuit's ruling in *U.S. West, Inc. v. FCC*, where the court held that the FCC's *CPNI Order* represented a violation of U.S. West's First Amendment right to commercial speech. CPNI, customer proprietary network information, encompasses highly personal information about, to whom, where and when a telecommunications customer places a call. The FCC's *CPNI Order* required telecommunication companies to obtain prior express approval from their customers before using or disseminating a customer's CPNI for marketing purposes. The author begins with a brief look at the history of privacy discourse in the U.S. Additionally, the author examines the legislative history of section 222 of the Telecommunication Act of 1996 as well as the procedural history that led to the FCC's adoption of the *CPNI Order*.

Next, the author reviews the court's reasoning. Upon first finding that the *CPNI Order* infringed on U.S. West's First Amendment right to commercial speech, the court ultimately finds that the *CPNI Order* did not directly or materially advance the state's interest. The author argues that the FCC's *CPNI Order* represented a reasonable interpretation of section 222 of the Telecommunication Act of 1996. Therefore, the author contends, the criticism the *U.S. West* Court levels against the *CPNI Order* belongs more properly to the deficiencies of section 222. The author notes that the legislative history offers no empirical justification for the protection of CPNI.

Finding doubt in the ultimate constitutionality of section 222, the author maintains that the deficiencies in section 222 and the *CPNI Order* speak to the general lack of a unified policy directing government attempts to protect customer privacy. The author argues that the development of such a policy would give privacy statutes a firm policy and evidentiary basis. Finally, the author recommends that policymakers work toward a guiding principle for privacy legislation in order to avoid constitutional attacks similar to those in *U.S. West*.