

May 30, 2006

**VIA FAX AND EMAIL**

Carole Washburn  
Executive Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Pk. Dr. S.W.  
PO Box 47250  
Olympia, WA 98504-7250

Re: Request of American Civil Liberties Union of Washington (ACLU) for Investigation of Possible Unlawful Disclosure of Private Customer Information By Telecommunications Companies to the National Security Agency (NSA), Docket No. UT-060856.

Dear Ms. Washburn:

Public Counsel has reviewed the May 23, 2006, letter request of the American Civil Liberties Union of Washington (ACLU) asking the Commission to investigate allegations that “telephone companies have regularly shared consumer telephone records with the National Security Agency without legal authority.” ACLU Letter, p. 1.

The ACLU request raises a number of serious legal and factual questions which are appropriately brought to the Commission for review. As a general matter, the WUTC has jurisdiction to protect private customer information constituting customer proprietary network information (CPNI) from unlawful disclosure. WAC 480-120-202; *See, In the Matter of Adopting [Rules] Relating to Telecommunications Companies – Customer Information Rules*, Docket No. UT-990416, General Order No. R-505, (November 7, 2002), ¶¶ 28-30; *In the Matter of Amending, Adopting and Repealing [Rules] Relating to Telecommunications*, Docket No. UT-040015, General Order, No. R-516, ¶ 38. The United States District Court for the Western District of Washington observed in a case involving the Commission’s CPNI rules that “[i]t is well settled that ‘the protection of ... privacy is a substantial state interest.’ *Verizon v. Showalter*, 282 F. Supp 2d 1187, 1101 (W.D. Wa. 2003)(citations omitted).

As the record and order in Docket No. UT-990416 reflect, this Commission has previously devoted substantial attention to telecommunications privacy and it has been a matter of significant concern for Washington telecommunications consumers. However, the issues raised by the ACLU letter were not specifically addressed in earlier Commission orders on this topic. In order to make a reasoned decision on the request, therefore, Public Counsel recommends that the Commission institute a preliminary investigation. In addition to providing for an informal

Ms. Carole Washburn  
May 30, 2006  
Page 2

Staff investigation, the process should include an opportunity for all affected telecommunications companies, Public Counsel, the ACLU and other interested parties to file legal memoranda and any factual material which they believe would be helpful to the Commission. Public Counsel suggests it would be appropriate for the Commission to provide notice of the process to all participants in the Commission's prior CPNI rulemaking dockets cited above. A time frame of 30-45 days for this initial process would be reasonable.

Public Counsel will be present at the open meeting on May 31 to address this matter.

Sincerely,

Simon J. ffitc  
Assistant Attorney General  
Public Counsel Section  
(206) 389-2055

SJf:kez

Cc: David Danner (via email only)