

July 26, 2004

VIA ELECTRONIC MAIL, FAX AND FIRST CLASS MAIL

Carole Wasburn, Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, Washington 98504-7250

Re: Telecommunications Tune-up Rulemaking
Docket No. UT-040015
July 28, 2004, Open Meeting

Dear Ms. Washburn:

Public Counsel respectfully submits these comments in advance of the Commission's July 28, 2004 Open Meeting. While we recognize that several of the proposed modifications to the telecommunications rules contain fairly minor, housekeeping changes, we are concerned that some of the proposed draft rules contain significant modifications that have not yet received the benefit of comprehensive stakeholder review, and should therefore not yet be moved to CR-102. In particular, Public Counsel recommends that three rules not be moved to CR-102

**WAC 480-120-207 Customer proprietary network information and
WAC 480-120-999(5) Adoption by reference**

With respect to the CPNI related rules (WAC 480-120-207 and WAC 480-120-999(5)), we observe that the Commission now proposes, in its draft rules dated July 28, 2004, to adopt by reference the CPNI rules of the Federal Communications Commission (FCC) in effect as of October 1, 2002. Public Counsel views this as a significant change from the Commission's prior draft rules, dated June 9, 2004. The June 9, 2004 draft rules, which parties had an opportunity to comment on by June 30, 2004, contained specific draft rules addressing use of CPNI without customer approval, approval required for use of CPNI, and notice requirements. There appears to be some debate as to whether the June 9, 2004 draft rules were identical to the FCC rules. According to Verizon, the Commission's proposed rules "are not identical in all respects to the current FCC rules, but would impose unnecessary additional reporting and noticing requirements." Verizon comments filed June 30, 2004 at 4.

The Commission's current proposal, provided to stakeholders only late last week, would simply adopt the FCC's CPNI rules by reference. This is a last minute change with significant implications that has not had the benefit of thorough stakeholder review through comments and workshops. The Commission's June 9 draft rules, while generally following the FCC's CPNI rules, allowed for dialogue amongst stakeholders as to whether improvements, clarifications and refinements to the proposed rules, consistent with the FCC rules and Commission authority, might be incorporated into Washington's CPNI rules. In Public Counsel's comments filed June 30, 2004, which we incorporate here by reference, Public Counsel encouraged the Commission to consider additions and clarifications to the FCC CPNI rules that

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would provide additional safeguards for consumer's private information. The federal district court made a similar recommendation to the Commission. In *Verizon v. Showalter*, the court recommended that the Commission "more stringently regulate the form and content of opt-out notices." 282 F. Supp.2d 1187 (W.D. Wash. 2003) at 14. However, by simply adopting the FCC rules by reference, the Commission would foreclose such debate.

In addition, Public Counsel opposes simple adoption of the FCC's CPNI rules by reference because doing so would make it more difficult for Washington consumers to fully understand and obtain information regarding their privacy rights. Consequently, we believe the CPNI rules should not be moved to CR-102.

WAC 480-122-020 Washington telephone assistance program rate

With respect to WAC 480-122-020 regarding the Washington Telephone Assistance Program (WTAP) rate, Public Counsel believes that issues we raised in our prior, June 30, 2004 comments should be explored prior to moving this rule to the CR-102 stage. While it may be appropriate to limit carrier participation in WTAP to eligible telecommunications carriers (ETCs), we are concerned that there may be parts of the state that do not have a designated ETC, and that WTAP customers may have little if any competitive choices. We therefore recommend the Commission allow for further opportunity for stakeholder review of this proposed rule prior to moving it to CR-102.

In closing, Public Counsel commends the Commission for the omission of WAC 480-120-133 (business office answer time performance), from the proposed CR-102 filing. As we discussed in our June 30, 2004 comments, we believe the prior draft rule contained many flaws. Additionally, Public Counsel supports the clarifying language that has been added to WAC 480-120-122(5) to indicate that companies must offer the deposit alternatives to applicants or customers.

Thank you for your consideration of these recommendations.

Sincerely,

Simon J. ffitc
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SJf:cjw

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cc: Sharyn Bate, WUTC