**BEFORE THE**

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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| **In re: Telecommunications Rulemaking** | **)** | |
| | **)** | **Docket No.UT-990146** |
| **Chapter 480-120 WAC Telecommunications - Operations** | **)** | |

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## COMMENTS OF WORLDCOM

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WorldCom, Inc. on behalf of its regulated subsidiaries in the State of Washington, hereby presents the following comments on the proposed rules relating to customer proprietary network information ("CPNI").

## I. INTRODUCTION

As a general matter, the proposed rules have been significantly improved from the previous draft. However, the rules, as proposed, contain one glaring omission. They fail to recognize that in the context of competing for local service orders, competitive carriers need to be able to obtain oral consent from prospective customers to review their existing local service record with the customer during the sales call, to ensure the accuracy and completeness of their new service order. This capability, which is a part of the competitive carrier's operational support systems ("OSS") unbundled network element, cannot be accommodated in the third-party verification process as required by Federal Communications Commission ("FCC") rules. The sales process, including any confirmation of the customer's existing features and calling plan, must be completed before the sales order is submitted for independent verification and provisioning. There is no reason that customers cannot give oral consent to review their existing local service

record, particularly when such consent will be applicable only for the duration of a sales call (as in the example just given). This proposal seems particularly arbitrary, given that, under the proposed rules, customers could orally opt-out or deny such consent.

## II. COMMENTS ON SPECIFIC RULES

### A. WAC 480-120-201.

Definition of "call detail." Subsection (d) should be modified to make clear that it refers only to calling information when a specific individual is associated with it.

### B. WAC 480-120-203.

The list of exceptions for which call detail information can be used (and for that matter the use of the "call detail" definition itself) is structured differently from the federal CPNI restriction -- and excludes a federally-approved exception for the use of information to inform a legal guardian or immediate family member of a subscriber's location where there is a risk of serious physical harm.[1] This variation increases the costs to the carriers of complying with Washington-specific requirements as well as the risk of confusion and mistakes in the application of these requirements. WorldCom submits that the intended benefit of this change from the federal rules does not outweigh the harm caused to carriers by the increased costs and risks and requests that the Commission modify this proposed rule to make it consistent with the federal rules. No significant harm would be caused to Washington consumers if this change is adopted.

### C. WAC 480-120-207.

The annual notice requirement established in this Subsection (2) similarly unnecessarily increases the costs involved in an opt-out notice mechanism. Subsection 5(e), regarding confirmation of a customer's opt-out choice, should be expanded

[1] *See* 47 U.S.C. section 222 (d)(4)(B).

explicitly to allow such notice to be given by e-mail or other online notice or other means reasonably calculated to achieve actual notice. Again, no significant harm would be caused to consumers by the Commission's adoption of this change and in fact, it would benefit that sector of the population that transacts business using the Internet.

**D. WAC 480-120-208.**

Subsection (2)(c) and (d) appear to require both a check box or blank on the notice document that the customer can return and a separate postage-paid card included with the notice. These redundant but similar means of accomplishing the same result is as likely to confuse recipients as make it easier for them to respond. It should be enough that recipients are given an option by which they can respond by mail. In this instance, more is overkill, particularly the requirement to include postage-paid cards, when it is predictable that many of the cards will not be used.

**E. WAC 480-120-209.**

Subsection (4), as a practical matter, would prohibit oral consent for the use of private account information. The stated option of allowing oral consent if verified by a third-party is not permitted under the federal requirements for third-party sales verification, nor can two separate third-party verifications be accomplished in the same sales transaction. The practical result of this proposal-- effectively requiring written opt-in approval -- would block the development of competitive local service in Washington.

Under current law, a competitive local carrier can access a prospective customer's existing service record with the incumbent local provider before submitting that

customer's new service order, thereby ensuring its accuracy and completeness.[2] This often occurs in "real time" while the competitive carrier is still on the telephone with a customer who has indicated a desire to subscribe to new local service. Once the customer has given oral approval, the new carrier can electronically access the prospective customer's existing local service record with the incumbent provider, confirm the customer's existing features and calling plan, and thereby ensure that the new service order is placed correctly. This existing process has been in place for years now in a number of states. The prohibition of oral consent here would block this process, halting the development of competitive local service, and setting up a conflict with existing practice.

As noted above, it is not possible to first send the customer's oral consent to a third-party verifier before accessing the customer service record. That information is used to confirm the sales order that is sent to the independent third party for verification -- consistent with federal requirements -- after the sales call has been completed. Federal law prevents the sales agent from remaining on the call while the sale is independently verified and the successful completion of the verification allows the order to be put

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[2] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, paras. 434-5 (1999)("UNE Remand Order") ["[I]ncumbent LECs have access to exclusive information . . . needed to provide service [such as] customer service record information ….[T]he incumbent LEC has access to unique information about the customer's service, and a competitor's ability to provide service is materially diminished without access to that information . . . competitor[s] run[] the risk of offering a lower quality of service from the perspective of the end-user if it does not know all the details of the customer's current service offering."]; See also, *Id*, para. 435. An ILEC's obligation to provide access is not limited to situations where the CLEC is placing an order for unbundled elements or resold service. "[L]ocal exchange carriers may need to disclose a customer's service record upon the oral approval of the customer to a competing carrier prior to its commencement of service as part of the LEC's obligations under sections 251(c)(3) and (c)(4)." *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket Nos. 96-115 and 96-149, para. 84 (1998); Order on Reconsideration, para. 85.

through to the incumbent local carrier. This process simply cannot accommodate a separate verification of the customer's oral consent to view his or her existing local features and calling plan, which practically must be reviewed with the customer before the sales order is submitted to third-party verification and (assuming the sale is verified) provisioning.

As the FCC has recognized, the carrier obtaining the customer's oral consent ultimately has the burden of demonstrating that it received that consent. There is no doubt that a carrier must accept a customer's oral direction when it is to opt-out or to decline to grant consent; a carrier should likewise be able to accept the customer's oral direction when it is to opt-in and grant consent.

With respect to other aspects of this provision, subsection (3) requires that written notice be provided with a solicitation for explicit customer approval. This should be changed for all of the reasons noted above supporting the validity of oral as well as written communications noted above. In addition, FCC regulations today allow notice to be given separately from the solicitation of customer consent. Adoption of this provision would set up an unnecessary conflict with the federal rules in this area.

The separate listing under subsection (3)(a) that the customer has certain rights and under (b) that carriers have certain duties -- where the rights and duties are just two sides of the same coin -- is overkill and likely to cause more confusion than clarity in the minds of consumers.

Subsection (c) should be explicitly limited to requiring notice about the types of information that the carrier may access if that is less than the full scope of the definition of "private account information."

Subsection (d) should not require the names of specific company entities, including affiliates and subsidiaries. The specific corporate entities that companies use to organize their businesses often are little known to consumers who better understand the brand names under which the relevant services are marketed. It should be sufficient to require a level of notice that is sufficient to put consumers on notice of the full range of entities that may have access to the relevant information.

Subsection (f) requiring an affirmative statement that consent is voluntary, is unnecessary in light of the other notice provisions and is likely to raise more questions in the minds of consumers than it answers.

Subsection (l) is inconsistent with an oral consent process, which as previously stated, is essential to local competition.

Subsections (m) and (n) are appropriate where the consent obtained is of a continuing nature but has no application where consent is obtained only for the duration of the call -- as is the case when oral consent is obtained for ordering purposes -- as described above. Accordingly, these requirements would not apply in that case and these rules should so state.

**F. WAC 480-120-211.**

As stated above, requiring written confirmation of an opt-in consent is inappropriate when the consent is obtained only for the duration of the call, as in the case of checking existing local features and calling plan for ordering purposes. The rule should be modified explicitly to except that circumstance.

**G. WAC 480-120-212.**

There is no reason to prevent carriers from obtaining consent that is explicitly limited in time, particularly in the case of oral consent to check existing local features and calling plan for ordering purposes. The rule should be modified to make that exception explicit.

**H. WAC 480-120-215.**

Subsection (3) is confusing and needs clarification.

## III. CONCLUSION

WorldCom appreciates the opportunity to comment on the proposed rules and the Commission's consideration and adoption of some of the changes previously proposed by the parties. For the reasons stated above, WorldCom respectfully requests that the Commission consider and adopt these recommendations as well.

Respectfully submitted this 12th day of June, 2002.

**WORLDCOM, INC.**

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