

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Interpreting	)	DOCKET NO. UT-021696
	)	
WAC 480-120-201 through WAC	)	
480-120-209 and WAC 480-120-211	)	INTERPRETIVE STATEMENT
through WAC 480-120-216	)	REGARDING USE OF CUSTOMER
	)	INFORMATION BY AGENTS
Relating to Telecommunications	)	
Companies – Customer Information	)	
Rules.	)	
.....	)	

- 1 The purpose of this statement is to interpret and clarify the application of the Commission’s customer privacy rules in situations where a non-employee agent or contractor of a telecommunications company performs the actions of the telecommunications company. The Commission adopted the telephone customer privacy rules on November 7, 2002, and they became effective on January 1, 2003.
  
- 2 Qwest Corporation requested this interpretive statement by petition filed with the Commission on December 23, 2002. The Commission may issue an interpretive statement upon the petition of any interested person when necessary to end a controversy or to remove a substantial uncertainty about the application of Commission rules. *RCW 34.05.230; WAC 480-09-200.*
  
- 3 The Commission heard comments on this matter during its open meeting of January 22, 2003. Commission Staff provided the written and oral comments of Dr. Glenn Blackmon, and Qwest supplemented its petition with comments of Teresa Jensen. In addition, the Commission heard comments from Simon ffitich of the Attorney General’s Public Counsel division.<sup>1</sup>

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<sup>1</sup> Mr. ffitich asked the Commission to recess the matter, provide notice of it to others, and receive further comments during a future public session. The Commission took the request under advisement. Neither RCW 34.05.230 nor WAC 480-09-200 requires the Commission to invite or consider any public comment before issuing an interpretive or policy statement. Nevertheless it is the Commission’s practice, when feasible, to provide an opportunity for dialogue related to such proposals. In addition to open meeting-based discussions it has used other public comment modes. Such measures are warranted when the Commissioners as well as participants would benefit from discourse. Here, the Commission is satisfied that the matter in question was discussed thoroughly during the rulemaking process and the January 22 meeting. Further discourse would likely duplicate prior comments, and the Commissioners are clear about the meaning of the rules they adopted. The Commission appreciates the suggestion and values

- 4 Qwest asks the Commission to issue an interpretive statement clarifying and affirming that the provisions of the newly adopted rules do not prohibit the use of customer information by Qwest's non-employee agents or contractors when such agents/contractors are acting in the same capacity as a Qwest employee, are using the information in the same manner as a Qwest employee might, and are subject to the same confidentiality obligations that govern a Qwest employee. In other words, when those non-employee agents or contractors are performing the same work that would permit the use of that information within Qwest, where the rules permit a company to "use" customer information, Qwest seeks an interpretation that such use may be by Qwest's employees, or by its non-employee agents or contractors. *Qwest Petition, pages 1-2.*
- 5 The rules that Qwest wants interpreted include WAC 480-120-201 (Definitions), -204 (Opt-in approval required), -205 (Using CPNI in the provision of services), -206 (Using CPNI during telemarketing calls) -207 (Use of PAI by company or associated company requires opt-out approval), -208 (Use of PAI without customer approval), and -212(5) (Illustrative table). *Id., page 2.*
- 6 Qwest also asks whether, under WAC 480-120-208 (and perhaps other rules as well), disclosure to an agent or contractor is permissible when the disclosure is for marketing purposes that are permitted under the rule without customer approval. Qwest asks the Commission to clarify that it is.
- 7 The Commission agrees with Qwest that these questions should be clarified. While the corresponding federal statute and rules explicitly provide that agents of a telecommunications company are subject to the same conditions as the company itself, this point is implicit in the Washington rules. It is a significant issue, and any ambiguity should be eliminated.
- 8 Qwest states that it currently uses non-employee agents and independent contractors for aspects of customer care, service order processing, order fulfillment as well as for marketing Qwest's products and services. Qwest believes, and seeks clarification from the Commission, that when it is permitted under the rules to "use" customer information (either without any approval or with opt-in or opt-out approval) it may do so via agents and independent

contractors in the same manner as if Qwest employees were using the information.

- 9 The Commission agrees with this interpretation of its rules. It is well established that a telecommunications company may use non-employee agents to carry out activities that it is allowed or required to perform. The Commission's rules generally make no distinction between action, or inaction, of a telecommunications company that is performed by an officer, an employee, or an agent. Perhaps the best example of this principle is in enforcement of the Commission's anti-slamming rule, WAC 480-120-139. This rule prohibits telecommunications companies from changing a customer's local or long-distance service without his or her permission. When violations of these rules occur, the entity actually submitting the unauthorized order to change a customer's service is typically a contractor working as an agent of the telecommunications company. The Commission nonetheless holds the telecommunications company itself responsible for the violation of law.
- 10 The Commission's customer privacy rules provide ample opportunity for a telecommunications company to communicate with its customers within the business relationship between the company and the customer. To the extent a company is allowed to use customer information for marketing purposes, either without customer approval or after obtaining either opt-in or opt-out approval, the Commission's rules make no distinction as to whether the company uses an employee or a non-employee agent or contractor to perform that function.
- 11 The question asked by Qwest concerns allowing access to customer information:

when such agents/contractors are acting in the same capacity as a Qwest employee, are using the information in the same manner as a Qwest employee might, and are subject to the same confidentiality obligations as would govern a Qwest employee. *Qwest's Petition for an Interpretive Statement re WAC 480-120-201 et seq. pp. 1-2.*

The conditions offered by Qwest are important. To ensure that Qwest's customers are protected, non-employee agents and/or contractors must maintain the confidentiality of customers' information. The conditions offered by Qwest are material factors; if these factors are not present then Qwest should not share customer information with non-employee agents or contractors.

12 The Commission emphasizes that, just as a telecommunications company is responsible for the actions of its employees, it is also responsible for the actions of those authorized to act as agents of or contractors for the company. Companies are encouraged to limit access of employees, agents, and contractors to sensitive customer information.

13 **Conclusion:** When a company is permitted to "use" information under chapter 480-120 WAC, it is permitted to do so either with its own employees or with non-employee agents or contractors who are acting in the same capacity as its own employees, who are using the information in the same manner as a company employee might, and who are subject to confidentiality obligations that are as stringent as those governing a company employee.

Dated at Olympia, Washington and effective this 23rd day of January, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner