

September 25, 2012

Re: Rulemaking to Consider Modifications to, or Elimination of, the Requirement Related to Distribution of Telephone Books in WAC 480-120-251, Docket UT-120451

Dear Mr. Danner:

The Broadband Communications Association of Washington (“BCAW”) appreciates the opportunity to respond to the Washington Utilities and Transportation Commission’s (the “Commission”) inquiries set forth in its September 14, 2012 Notice of Opportunity to File Response (the “Notice”) and to comment regarding the filings of other parties in this proceeding.

As regards the Commission’s first inquiry,¹ BCAW’s previous filings discussed the conditions ordered in Georgia and Missouri for “opt in” distributions of printed directories when the state utility commissions in those states considered modifying or eliminating their white pages directory distribution requirements.² Those conditions are that: (a) there must be no differentiation by an ILEC or its affiliate between its customers and the customers of competitive providers who request a printed directory; (b) customers must be able to contact their own service providers to obtain a printed directory; (c) the ILEC and any publisher for the ILEC must refrain from marketing

¹ The inquiry is:

What has been the experience in other states that have adopted either an opt-in or opt-out program for the distribution of directories?

- a. How was the transition implemented (e.g., by flash cut or phased in, and if phased in, over what period of time)?
- b. How are customers notified of their option, and what is the number and nature of complaints that have been received about the programs?
- c. What has been the success rate separately for opt-in programs and opt-out programs in reducing the number of distributed directories?

² See, e.g., *Notice of Proposed Rulemaking to Amend Commission Rule 515-12-1-10(3), Directories*, Order Adopting Rule, Docket No. 30569-U (Ga.P.S.C. April 28, 2010); *Southwestern Bell Telephone Company, d/b/a AT&T Missouri’s Application for Waiver of the General Distribution Requirement of White Page Directories Under 4 CSR 240-32.050(4)(B)*, Order Approving Unanimous Stipulation and Agreement, Case No. IE-2009-0357 (Mo. P.S.C. July 24, 2009).

the ILEC's services to customers of other service providers when such customers request a printed directory; (d) ILECs must accept electronic files from competitive providers identifying customers that request a printed white pages directory; and (e) ILECs and their affiliates must be required to enter into arrangements with competitive carriers for the provision of directories to customers. These same conditions should be required by the Commission (albeit in modified form were the Commission to approve an "opt out" form of directories distribution).

The BCAW has no empirical evidence or other information in response to the Commission's other inquiry.³ With respect to the August 20, 2012 filings of other parties, irrespective of whether a bill message or other form of notice may be used in lieu of bill inserts,⁴ or whether the Commission should require additional forms of notice,⁵ there should be a process allowing customers of competitive providers to contact their own service providers regarding directory distribution issues. As urged by BCAW, customers should be advised that any request regarding distribution or non-distribution of a directory may be made directly to the customer's service provider, and not only to a third party having no relationship with the customer.

³ That inquiry is:

With respect to the proposal to amend the proposed rule to treat service areas with co-bound white and yellow page directories differently than service areas with stand alone white pages directories, please provide to the following information:

- a. The number of Washington service areas in which co bound directories currently are being distributed.
- b. The total number distributed to customers in Washington of both co-bound directories and stand alone white pages directories.
- c. Please provide examples and results from other states where co-bound directories are or were treated differently than stand-alone white pages directories.

⁴ Frontier's letter comments, pp. 1-2. *See* CenturyLink's Reply Comments, p. 3.

⁵ *See* Public Counsel's Comments, p. 2.

Lastly, the WUTC should not change the definition of “directory” to mean only residential directories⁶ and the WUTC should not otherwise state or imply that directory distribution and publication are not obligations of ILECs.⁷ The competitive communications industry primarily relies on interconnection agreements with ILECs for compliance with the obligation to provide directories, in accordance with the ILECs’ obligations under 47 U.S.C. § 251(b)(3) and accompanying FCC regulations and case law.⁸ These interconnection agreements typically obligate ILECs, at no charge, to provide the customers of competitive providers with white pages directories in the same manner and at the same time that such directories are delivered to ILEC customers. The Commission should ensure that any changes in the wording of WAC 481-120-251 affecting distribution obligations not be capable of an interpretation that would allow ILECs to declare that they are no longer required to enter into arrangements to publish directory listings and distribute white pages directories on a nondiscriminatory basis.

BCAW thanks the Commission for the opportunity to comment and for the Commission’s consideration of these comments. BCAW looks forward to continued participation as this proceeding moves forward.

Very truly yours,

Ron Main, Executive Director
Broadband Communicatons Association of WA

⁶ Dex One Corporation’s Comments, pp. 2-4.

⁷ See, e.g., CenturyLink’s Reply Comments, p. 3 (“CenturyLink and other LECs should not be required to send a bill notice to their customers about the availability of a white pages directory”).

⁸ See 47 C.F.R. 51.217; *US West v. Hix*, 93 F. Supp. 2d 1115, 1132 (D. Colo. 2000).