

APPENDIX C

NEW SECTION

WAC 480-120-201 Definitions. The definitions in this section apply to WAC 480-120-202 through 218:

“Associated company” means any company that controls, is controlled by, or is under common control with, another company.

“Call detail” Except as provided in subsection (e), “call detail” means: (a) Any information that identifies or reveals for any specific call, the name of the caller (including name of a company, entity, or organization), the name of any person called, the location from which a call was made, the area code, prefix, any part of the telephone number of any participant, the time of day of a call, the duration of a call, or the cost of a call;

(b) The aggregation of information in subsection (a) of this subsection up to and including the level where a specific individual is associated with information on calls made to a given area code, prefix, or complete telephone number, whether that information is expressed through amount spent, number of calls, or number of minutes used and whether that information is expressed in monthly, less-than-monthly or greater-than-monthly units of time;

(c) The aggregation of the information in subsection (a) of this subsection up to and including the level where, expressed on a less-than-per-month basis, a specific individual is associated with general calling patterns (e.g. peak, off-peak, weekends) or amounts spent.

(d) Information associating a specific customer or telephone number with the number of calls that are answered or unanswered, correlated with a time of the day, day of the week, week or weeks, or by any time period shorter than one month.

(e) Call detail does not include information, other than information described in subsections (a), (b), (c), and (d) of this definition, compiled on a monthly basis. For example, call detail does not include the amount spent monthly by a specific customer on long distance calls, including the amount spent monthly on intra-LATA toll, intra-state toll, and interstate toll; the amount spent monthly on ancillary services; or the number of unanswered calls per month for a specific telephone number. Call detail does include, for example, the amount spent monthly calling area code XXX; that a particular telephone number was called X times in a month; the number of unanswered calls between the hours of 8:00 A.M. and 5:00 P.M. each month and the number of unanswered calls on Tuesdays each month.

“Customer proprietary network information (CPNI)” means: (a) Information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service, including call detail, and that is made available to the company by the customer solely by virtue of the customer-company relationship; and

(b) Information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a company; except that CPNI does not include subscriber list information.

- (c) CPNI includes
 - (i) call detail,
 - (ii) private account information, and
 - (iii) information that is not individually identifiable to any particular customer.

“**Company**” means any telecommunications company as defined in RCW 80.04.010.

“**Data base management system (DBMS)**” means a data base used by local exchange company to provide automatic location information (ALI) to public safety answering points (PSAPs).

“**Individually identifiable customer proprietary information (I-CPNI)**” means call detail and private account information.

“**Private account information (PAI)**” means the subset of CPNI that does not include call detail but is associated with an identifiable individual.

“**Subscriber list information**” means any information: (a) Identifying the listed names of subscribers of a company and those subscribers’ telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned when service is established), or any combination of listed names, numbers, addresses, or classifications; and

(b) That the company or an affiliate has published caused to be published, or accepted for publication in any directory format.

“**Telecommunications service**” means the offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used.

“**Telemarketing**” means contacting a person by telephone in an attempt to sell one or more products or services.

NEW SECTION

WAC 480-120-203 Use of customer proprietary network information (CPNI) not permitted to identify or track customer calls to competing service providers. A company may not use, disclose or permit access to CPNI to identify or track customers that call competing service providers. For example, a local exchange company may not use local service CPNI to track all customers that call local service competitors.

NEW SECTION

WAC 480-120-204 Opt-in approval required for use, disclosure, or access to customer I-CPNI. A company may not use, disclose, or permit access to a customer's I-CPNI, unless the customer has given opt-in approval.

NEW SECTION

WAC 480-120-205 Using customer proprietary network information (CPNI) in the provision of services. Notwithstanding WAC 480-120-204, a company may use, disclose, or permit access to CPNI to the extent necessary to:

- (1) Initiate, render, coordinate, facilitate, bill, and collect for telecommunications

services the customer has purchased or requested;

(2) Provide customer premise equipment and call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and protocol conversion.

(3) Provide inside wiring installation, maintenance, and repair services.

(4) Protect the rights or property of the company, or to protect users of those services and other companies from fraudulent, abusive, or unlawful use of, or subscription to, such services;

(5) Resolve formal and informal complaints communicated to the company or commission by an applicant or customer;

(6) Provide records to a data base management system, or to any other database used in the provision of enhanced 9-1-1 or 9-1-1 service, or perform any other service for enhanced 9-1-1 or 9-1-1 purposes;

(7) Provide call location information concerning the user of a commercial mobile service, as the term is defined in 47 U.S.C. § 222(d) to,

(i) a public safety answering point, emergency medical service provider or emergency dispatch provider, public safety, fire service, or law enforcement official, or hospital emergency or trauma care facility, in order to respond to the user's call for emergency services;

(ii) inform the user's legal guardian or members of the user's immediate family of the user's location in an emergency situation that involves the risk of death or serious physical harm; or

(iii) provide information or database management services solely for purposes of assisting in the delivery of emergency services in response to an emergency.

(8) Comply with any applicable law, or any governmental rule, regulation or order, or any subpoena or other demand of apparently lawful authority.

NEW SECTION

WAC 480-120-206 Using individual customer proprietary network information (I-CPNI) during inbound and outbound telemarketing calls.

Notwithstanding 480-120-204:

(1) A company may use an individual's I-CPNI to the extent necessary to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if:

(a) Such call was initiated by the customer; and

(b) During the call and prior to the company's use of the information, the customer expresses approval for the company to use the information during the call.

(2) A company may use an individual's I-CPNI to the extent necessary to provide telemarketing referral, or administrative services to the customer for the duration of an outbound telemarketing call, if:

(a) The company provides oral notice during the call that complies with 480-120-212, except the oral notice is not required to comply with subsection (3)(i), (l), (m), (n), and (o), and subsection (4)(a) of 480-120-212; and

(b) During the call and prior to the company's use of the I-CPNI, the customer expresses approval for the company to use the information during the call in the manner required in 480-120-212(4)(b).

(3) This section does not apply if:

(a) A company is permitted to use PAI because it has opt-out approval under WAC 480-120-209 and 211.

(b) A company is allowed to use PAI without approval by WAC 480-120-208; or

(c) A company is permitted to use I-CPNI because it has obtained opt-in approval under WAC 480-120-212.

NEW SECTION

WAC 480-120-207 Use of private account information (PAI) by company or associated companies requires opt-out approval. Notwithstanding WAC 480-120-204:

(1) Unless the customer directs otherwise, a telecommunications company and its associated companies may use a customer's PAI to market the company's or its associated companies' own products and services.

(2) A company may not use a customer's PAI information as provided in subsection (1) of this section unless it has provided notice to each customer pursuant to WAC 480-120-209, and provided the customer with a reasonable opportunity to direct the company not to use the information (opt-out) pursuant to WAC 480-120-211.

NEW SECTION

WAC 480-120-208 Use of customers' private account information (PAI) to market company products and services without customer approval. Notwithstanding WAC 480-120-207(2):

(1) A company and its associated companies may use PAI without customer approval for the purpose of marketing their service offerings among the categories of service (*i.e.*, local, interexchange, and commercial mobile radio service (CMRS)) to which the customer already subscribes from the same company.

(a) If a company provides different categories of service, and a customer subscribes to more than one category of service offered by the company, the company is permitted to share the customer's private account information with its associated companies that provide a service to the customer.

(b) If a company provides different categories of service, but a customer does not subscribe to more than one category of service offered by the company, the company is not permitted to share the customer's PAI with its associated companies. This subsection does not preclude a company from meeting the requirements of, and taking action under, WAC 480-120-209 and 211 or 212.

(2) A company may use customers' PAI related to that company's provision of local exchange service to market services formerly known as adjunct-to-basic services, such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call

waiting, caller I.D., call forwarding, and certain centrex-type features without customer approval.

NEW SECTION

WAC 480-120-209 Notice when use of private account information (PAI) is permitted unless a customer directs otherwise (opt-out). (1) This section applies when a company, pursuant to WAC 480-120-207(1), is permitted to use a customer's PAI unless the customer directs otherwise (opts-out). If a company that is permitted to use the opt-out method voluntarily uses the opt-in method, then the requirements of WAC 480-120-212 apply.

(2) A company may not use a customer's private account information pursuant to WAC 480-120-207(1) unless, at least once in the past two years, the company has provided a written notice to the customer, as provided for in this section, and provides the customer with a reasonable opportunity to opt-out at any time. The written notice may be provided by electronic mail to customers with whom the company ordinarily conducts business through electronic mail. A notice provided by electronic mail must comply with this section, but the company is not required to provide the means for response to an opt-out notice required in 480-120-211(2)(c) and (d) to customers that receive the required notice by electronic mail.

(3) The written notice must be mailed separately from any advertising or promotional material. It may be included with the customer's bill.

(4) The written notice must be posted on the company's web site and must be readily accessible from the company's home page.

(5) Any opt-out notice must include the following items:

(a) A statement that the name, address, and telephone number, if published in the telephone directory, are not private information and may be used by telemarketers even if the customer opts-out;

(b) A statement that private account information may be used to market (i) telecommunications-related products and services, or (ii) other products and services, or both (i) and (ii), whichever applies;

(c) A statement that the customer has a right to direct the company not to use the customer's private account information and that doing so will not affect the provision of any services to which the customer subscribes;

(d) A disclaimer that an opt-out directive for private account information does not prevent the company from making telephone solicitation or telemarketing calls to the customer and does not prevent the company from including the customer's listed name, address, and telephone number in lists sold, leased or provided to other firms. This disclaimer is not required if the company's practice is to exclude customers who opt-out of private account information use from use or disclosure for telemarketing purposes or if the company does not sell, lease, or directly provide such lists to other firms;

(e) A statement that the customer should expect to receive written confirmation within thirty days of the directive, with a suggestion that the customer call the company if the confirmation is not received by this time;

(f) A prominent statement of specific instructions by which the customer can direct the company not to use the customer's private account information. The dedicated

opt-out telephone number required by WAC 480-120-211(2)(a) must be printed in bold type and in a size larger than the body of the notice.

(g) A statement substantially equivalent to one or more of the following, if true:

(i) “Without customer approval, the company uses your [the customer’s] private account information for the purpose of marketing service offerings among the categories of service (*i.e.*, local, interexchange, and CMRS) to which the customer already subscribes from the company;” or

(ii) “Without customer approval, the company shares your [the customer’s] private account information with its associated companies”; or

(iii) “Without customer approval, the company uses your [the customer’s] private account information to market adjuncts to basic services, such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features.”

(6) The notice must be comprehensible and not misleading.

(7) The notice must be clearly legible, in twelve-point or larger typeface.

(8) A company may state in the notice that the use of PAI may enhance the company's ability to offer products and services tailored to the customer's needs, if such a statement is accurate.

(9) A company may state in the notice that the customer, upon affirmative written request, may compel the company to provide PAI to any person.

NEW SECTION

WAC 480-120-211 Mechanisms for opting out of use of private customer account information (PAI). (1) This section applies when a company, pursuant to WAC 480-120-207(1), is permitted to use a customer’s PAI unless the customer directs otherwise (opt-out).

(2) At a minimum, companies must allow customers to opt-out using the following mechanisms, which must be provided by the company:

(a) Calling a dedicated, toll-free telephone number that provides access to a live or automated operator at all times. The telephone number must be accessible from all areas of the state where the company provides service. Without receiving unrelated information from the company before giving their directive, customers must have the option to opt-out;

(b) Calling any telephone number that the company provides for billing or customer service inquiries. This subsection permits companies to transfer customers directly to the number required in (a) of this subsection;

(c) Marking a box or blank on the notice and returning it to a stated address;

(d) Returning a postage-paid card included with the notice;

(e) Electronic mail, if the company otherwise receives or sends electronic mail messages to its customers; and

(f) Submitting an opt-out form found on the company's web site. The opt-out form must be directly linked to the written notice required by WAC 480-120-209(2). The web site must be accessible to the public using generally available browser software.

(3) A company may require, as part of any opt-out mechanism, that the customer

comply with reasonable procedures to verify the identity of the customer. Any opt-out verification procedure must be no more burdensome on the customer than any verification procedure used by the company when a customer provides express (opt-in) approval or orders additional services on an existing account.

NEW SECTION

WAC 480-120-212 Notice when express (opt-in) approval is required and mechanisms for express approval. (1) This section applies when opt-in approval of the customer is required before a company is permitted to use, disclose, or permit access to a customer's I-CPNI.

(2) A company must maintain records of customer notification and approval.

(3) Any solicitation for express customer approval must be accompanied by a written notice to the customer of the customer's right to restrict use, disclosure, and access to that customer's I-CPNI. The notice must state that I-CPNI includes all information related to specific calls initiated or received by a customer.

(a) The notice must state that the customer has a right under federal and state law to protect the confidentiality and limit use, disclosure, and access to the customer's I-CPNI.

(b) The notice must state that the company has a duty under federal and state law to protect the confidentiality of I-CPNI and to comply with the customer's limitations on use, disclosure, and access to the information.

(c) The notice must state the types of information that constitute I-CPNI. If a company is seeking express approval to use, disclose, or permit access to call detail information, the notice must specify that call detail includes the telephone numbers of all calls made or received by the customer.

(d) The notice must specify whether the I-CPNI can be used, disclosed, or accessed by any entity or person other than the company providing the notice.

(e) The notice must describe general purposes for which I-CPNI can be used, disclosed, or accessed and specifically disclose whether the I-CPNI can be used to market services to the customer.

(f) The notice must inform the customer that approval by the customer is voluntary and that no action is required to protect the customer's I-CPNI from disclosure to third parties.

(g) The notice must inform the customer that deciding not to opt-in will not affect the provision of any services to which the customer subscribes.

(h) The notice must be comprehensible and must not be misleading.

(i) The notice must be clearly legible, in twelve-point or larger type, and be placed so as to be readily apparent to a customer.

(j) If any portion of a notice is translated into another language, then all portions of the notice must be translated into that language.

(k) A company may state in the notice that the customer's approval to use, disclose, or permit access to I-CPNI may enhance the company's ability to offer products and services tailored to the customer's needs, if the statement is accurate.

(l) A company may state in the notice that the customer, upon affirmative written request, may compel the company to disclose the customer's I-CPNI to any person. (m)

The notice must state that any approval for use, disclosure of, or access to I-CPNI may be revoked at any time.

(n) The notice must state that the customer should expect to receive written confirmation within thirty days and suggest that the customer call the company if the confirmation is not received by this time.

(o) A statement substantially equivalent to one or more of the following, if true,

(i) “Without customer approval, the company uses your [the customer’s] private account information for the purpose of marketing service offerings among the categories of service (*i.e.*, local, interexchange, and CMRS) to which the customer already subscribes from the company;” or

(ii) “Without customer approval the company shares your [the customer’s] PAI with its associated companies;” or

(iii) “Without customer approval the company uses your [the customer’s] PAI to market adjuncts to basic services, such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features.”

(4) Opt-in approval by the customer must be either:

(a) In writing, including messages by facsimile or electronic mail; or

(b) Orally, if the oral approval is verified by an independent third-party using substantially the same procedures as provided in WAC 480-120-147(1)(c) or if the company makes a sound recording of the oral approval sufficient to establish knowing approval.

(5) The following table illustrates information identified in WAC 480-120-204 through WAC 480-120-208 and whether it would be considered to require express “opt-in” approval, an “opt-out” directive or is not covered by the rule.

**Table Illustrating That Customer Approval Method
Depends on the Type of Information**

Type of Activity	Type of Information	
	Call Detail (specific calls, etc.)	Private Account Info. (excludes call detail)
Disclosing to third parties	Opt-in. (Sec. 204)	Opt-in (Sec. 204)
Marketing products and services out of category to which customer already subscribes	Opt-in (Sec. 204)	Opt-out (Sec. 207)
Marketing products and services within the category to which customer subscribes	Opt-in (Sec. 204)	No approval (Sec. 208)
In & outbound telemarketing of products and services out of category to which customer already subscribes	Oral opt-in good for duration of call (Sec. 206)	Oral opt-in, good for duration of call (Sec. 206; but no approval during call if company has opt-out approval under 207)
In & outbound telemarketing of products and services within the category to which customer subscribes	Oral opt-in good for duration of call (Sec. 206)	No approval (Sec. 208)

NEW SECTION

WAC 480-120-213 Confirming changes in customer approval status. (1)
 Each time a company receives a customer's opt-out directive or opt-in approval that changes the customer's approval status, the company must confirm in writing the change in approval status within thirty days. The written confirmation must either be mailed to the customer's billing address, or may be sent to the customer's electronic mail address if the directive was sent to the company by electric-mail, and must be separate from any other mail from the company. The confirmation must include a short summary of the effect of the customer's opt-out or opt-in choice, and must provide a reasonable method to notify the company if the company made an error in changing the customer's approval status.

(2) A company may not use, disclose, or permit access to a customer's call detail based on a customer's express opt-in approval until three weeks after mailing the confirmation to the customer.

(3) This section does not apply when approval was received for the duration of an inbound or outbound telemarketing call as provided for in WAC 480-120-206.

(4) This section does not apply when a customer requests disclosure of CPNI as provided for in WAC 480-120-216.

NEW SECTION

WAC 480-120-214 Duration of customer approval or disapproval. A company must continue to follow any opt-out directive or opt-in approval received until the customer revokes the directive or approval.

NEW SECTION

WAC 480-120-215 Safeguards required for I-CPNI. Every company has a duty to protect the confidentiality of I-CPNI.

(1) Companies must train all personnel who have access to I-CPNI as to when they are and are not authorized to use, disclose, or permit access to CPNI, and companies must implement an express disciplinary process to deal with violations of the requirement.

(2) Companies must establish a supervisory review process regarding company compliance with rules governing use, disclosure of, or access to CPNI for outbound marketing situations and must maintain records of company compliance for at least two years. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request.

(3) Companies must have an officer, as an agent of the company, sign a compliance certificate on an annual basis stating the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with rules concerning CPNI. The company must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules on this topic. The certificate and the compliance statement must be filed with the company's annual report to the commission.

(4) Class B companies need not report to the commission as required by subsection (3) of this section. However, these companies must retain, for at least three years from the date they are created, all records that would be relevant, in the event of a complaint or investigation, to a determination of the company's compliance.

NEW SECTION

WAC 480-120-216 Disclosing CPNI on request of customer. A company must disclose a customer's CPNI, upon affirmative written request by the customer, to any person designated by the customer.

NEW SECTION

WAC 480-120-217 Using privacy listings for telephone solicitation. (1) A local exchange company may not make telephone solicitation or telemarketing calls using its list of customers with nonpublished or unlisted numbers unless it has notified each such customer at least once in the past year that the company makes such calls to its customers with nonpublished or unlisted numbers and that the customer has a right to direct that the company make no such calls.

(2) When the company provides the notice required in subsection (1) of this section in writing, the notice must include a toll-free number and an electronic mail address the customer may use to state that solicitation should not be made.

(3) When the company provides the notice in subsection (1) of this section by phone call, the customer must be informed that inclusion in a solicitation list may be declined and if declined, the company must not make any additional solicitation.

NEW SECTION

WAC 480-120-218 Using subscriber list information for purposes other than directory publishing. If a company uses or provides subscriber list information for purposes other than directory publishing or compliance with 47 U.S.C. § 251(b)(3), it must exclude from use or disclosure the subscriber list information of any customer who subscribes to a privacy listing, including a nonpublished or unlisted number, or who directs the company to exclude subscriber list information relating to his or her service.

NEW SECTION

WAC 480-120-219 Severability. If any provision of sections 201 through 218 of this chapter or their application to any person or circumstance is held invalid, the remainder of sections 201 through 218 or the application of the provision to other persons or circumstances is not affected.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 480-120-144 Use of Privacy listings for telephone solicitation.
- WAC 480-120-151 Telecommunications carriers' use of customer proprietary network information (CPNI)
- WAC 480-120-152 Notice and approval required for use of customer proprietary network information (CPNI).
- WAC 480-120-153 Safeguards required for use of customer proprietary network information (CPNI).
- WAC 480-120-154 Definitions.