

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of:

AMERICAN CIVIL LIBERTIES UNION OF  
WASHINGTON

Petition for Investigation

DOCKET NO. UT-060856

REQUEST OF PUBLIC COUNSEL  
FOR OPPORTUNITY  
TO FILE SUPPLEMENTAL  
COMMENTS

The Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) files this request with the Washington Utilities and Transportation Committee in Investigation Docket No. UT-060856. Public Counsel respectfully requests that the Commission issue a notice inviting additional comments in this docket to consider recent developments on this CPNI issue.

On May 25, 2006, the American Civil Liberties Union of Washington (ACLU) asked the Commission to investigate possible violations of law or rule stemming from the recently publicized allegations that a number of telephone companies released customer calling information (CPNI) to the United States government at the government's request. The Commission considered the request at an open meeting on May 31, 2006, and accepted written comments through July 17, 2006. After the close of the comment period, the Commission issued

an order requiring telecommunications companies to preserve all evidence related to disclosure of CPNI.<sup>1</sup> However, the Commission postponed any investigation until cases pending in the federal courts were resolved.<sup>2</sup>

Over a year has passed since the Commission issued its order. In recent months, there have been a number of significant developments. As noted by the ACLU in its letter filed in this docket on September 12, 2007,<sup>3</sup> the Director of National Intelligence has made public statements that may “cast serious doubt on the supposed barriers to further investigation by both the federal courts and the Commission.” Also, the House Energy and Commerce Committee recently sent letters to AT&T, Qwest, and Verizon requesting information about what information the companies may have shared with the government.<sup>4</sup> At the same time, federal lawmakers are considering legislation that potentially hinders future investigation by the Commission.<sup>5</sup> Finally, federal litigation on this issue has developed as well; both the Sixth Circuit<sup>6</sup> and District Court for the Northern District of California<sup>7</sup> have issued opinions in cases alleging unlawful disclosure of CPNI.

Given these recent developments, it would be timely for the Commission to gather information, hear from stakeholders, and re-assess the status of this issue. The subject matter of this docket—the alleged disclosure of CPNI—raises serious civil liberties and consumer

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<sup>1</sup> Docket No. UT-060856, Order No. 02, Order Opening and Deferring Investigation Pending Resolution of Federal Issues; Directing Telecommunications Companies to Preserve Records, ¶¶ 50-51.

<sup>2</sup> *Id.*, ¶34.

<sup>3</sup> Docket No. UT-060856, Supplemental Comments by American Civil Liberties Union of Washington.

<sup>4</sup> Ellen Nakashima, *Telecoms Pressed On Surveillance*, Washington Post, Oct. 3, 2007, at D1.

<sup>5</sup> David Stout, *Bush Presses Congress On New Eavesdropping Law*, New York Times, Oct. 10, 2007, available at [http://www.nytimes.com/2007/10/10/washington/10cnd-nsa.html?\\_r=1&hp&oref=slogin](http://www.nytimes.com/2007/10/10/washington/10cnd-nsa.html?_r=1&hp&oref=slogin) (last visited Oct. 10, 2007).

<sup>6</sup> *American Civil Liberties Union v. National Security Agency*, 493 F.3d 644 (6th Cir. 2007).

<sup>7</sup> *Hepting, et al. v. AT&T*, 439 F.Supp.2d 974 (2006).

protection concerns. Through additional comments from all interested parties, the Commission will have the opportunity to review recent developments and gain a comprehensive, current understanding of this issue. Thus, Public Counsel requests that the Commission issue a Notice of Opportunity to File Supplemental Comments in this docket.

Dated this 17<sup>th</sup> day of October, 2007.

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