

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**COMMENTS OF PUBLIC COUNSEL
IN RESPONSE
TO NOTICE OF OPPORTUNITY TO FILE RESPONSE**

NOVEMBER 14, 2012

I. INTRODUCTION

1. In response to the Commission's Notice of Opportunity to Comment dated October 31, 2012, Public Counsel offers the following comments, revisions, and suggested rule language.

II. COMMENTS

2. In considering possible revisions to WAC-480-120-251, Public Counsel continues to support opt-out distribution over opt-in distribution of White Pages directories. Opt-out distribution would resolve the issues of waste surrounding unwanted directories¹ while also ensuring that customers who *do* want to continue receiving directories, particularly vulnerable customer groups who may not be able to access directories online, continue to receive directories without interruption.
3. In its notice issued on July 20, 2012, the Commission sought comments regarding a draft proposed rule which allowed for opt-in distribution of White Pages directories. This proposed

¹ Comments of Public Counsel, May 21, 2012, at ¶ 9, n.1.

rule included a number of customer protection provisions, including requirements on LECs to establish specific options by which a customer could request a print directory, requirements regarding reasonable notice to customers describing how to request a directory, and requirements regarding specific forms of customer notice. Public Counsel was supportive of these consumer protections and recommended additional modifications to strengthen consumer protections, including additional notice to customers regarding changes in distribution and continued saturation distribution of “blue pages” listings.²

4. The proposed rule parties are asked to comment on today allows LEC’s to choose to either distribute white pages under an opt-in or opt-out basis. However, all of the consumer protections included in the Commission’s initial proposed rule are not included in this proposed rule. Further, large portions of the existing rule have been eliminated in this proposed rule, specifically sections 4, 5, and 6. Public Counsel continues to advocate for certain consumer protections under an opt-in distribution mechanism which are not included in the proposed rule.³ In addition, we recommend that sections 4 and 6 of the existing rule, which address updating directories and distribution of the consumer information guide, be retained.⁴ Finally, we also address the procedural issue raised in the Notice regarding whether the Commission can adopt this proposed revised rule pursuant to the existing CR-102 or whether it must issue a supplemental CR-102 prior to adoption.

² See Comments of Public Counsel, August 20, 2012.

³ *Id.*

⁴ LECs are better able to address retention of section 5. Public Counsel would not object to retention of section 5.

A. WAC 480-120-251(2): Access to Directory Listings Free of Charge.

Comments:

5. The proposed rule does not clearly state that a LEC must provide online access or printed copy of a directory upon request, free of charge. This should be clarified in the proposed rule.

Suggested Rule Language:

6. **WAC 480-120-251(2):** A LEC must ensure that each of its basic local exchange service customers has access, free of charge, to directory listings for the customers local calling area through at least one of the following means:

- (a) Electronically via a document, database, or link on the LEC's website, provided that the LEC also distributes or arranges to distribute printed directory listings to all of the LEC's customer who request a printed directory; and/or
- (b) In hard copy via publishing or arranging to be published a printed telephone directory that includes the directory listings and distributing that directory to the LEC's customers, provided that a printed telephone directory shall not be distributed to any customer who requests not to receive a printed directory.

B. WAC 480-120-251(2)(X): A LEC Must Establish Reasonable Ways by Which A Customer May Request a White Pages Directory.

Comments:

7. The Commission's initial proposed rule required LECs to make available a number of options for customers to request a printed copy of a directory. Public Counsel believes these are important consumer protections that enhance a customer's ability to access a printed directory, should they require one. In addition, the methods provided for in the initial proposed rule have

relevance to the opt-out provision of the current proposed rule. These proposed revisions to the existing rule should be retained and modified as shown below.

Suggested Rule Language:

8. **WAC 480-120-251(2)(X):** A LEC must establish reasonable ways by which a customer may request a written directory, or request to opt out of receiving a written directory, including making all of the following options available:

- (i) Calling a toll-free telephone number;
- (ii) Submitting a written request via e-mail or on-line registration; or
- (iii) Mailing a written request to a specified address.

C. **WAC 480-120-251(X): A LEC Must Provide Reasonable Notice to Customers Regarding Changes to Distribution of White Pages.**

Comments:

9. The Commission's initial proposed rule included language requiring a LEC to provide reasonable notice to customers, including specific forms of notice which must be made available. In its August 20th Comments, Public Counsel supported these forms of notice and recommended certain additional forms of notice. Public Counsel continues to advocate for strong customer notice of changes to distribution of white pages directories. Additionally, the language in the original proposed rule is relevant to the opt-out provision of the current proposal. Proposed rule language addressing this revision is included below.

Suggested Rule Language:

10. **WAC 480-120-251(X):** A LEC must provide reasonable notice to customers describing the ways by which they may request a directory, or request to opt out of receiving a written directory, including, but not limited to, all of the following forms of notice:
- (a) Providing the information in at least one bill insert each calendar year;
 - (b) Maintaining the information in a prominent place on the LEC’s website;
 - (c) Including the information in a prominent place on the LEC’s website;
 - (d) Including the information in the consumer information guide required in subsection (6) of this section;
 - (e) Including the information in at least one press release each calendar year;
 - (f) Providing the information on the last printed directory a customer receives.

D. WAC 480-120-251(X): “Blue Pages.”

Comments:

11. The proposed rule does not include a provision that allows customers to receive written copies of emergency and government listings, sometimes referred to as “Blue Pages.” These listings are an essential component of White Pages and should continue to be provided to customers through saturation distribution to customers in print form. Indeed, a number of states addressing White Pages directory distribution have required companies to continue saturation distribution of the “Blue Pages.”⁵

⁵ See *Comments of Public Counsel*, September 25, 2012, Table 1. States that have expressly required saturation distribution of “Blue Pages” include California, Missouri, New Jersey, Ohio, and Pennsylvania. Saturation distribution of the “Blue Pages” is accomplished by including the Blue Pages with the business directories, either White or Yellow, that are still being distributed.

Suggested Rule Language:

12. **WAC 480-120-251(X)** A LEC must provide a printed copy of emergency and government listings to all customers and provide clear notice to customers stating where this information will be provided.

E. Removal of Sections, 4, 5, 6 of Existing WAC-480-120-251.

13. The proposed rule eliminates sections 4, 5 and 6 of the existing rule. Public Counsel's comments are limited to the elimination of sections 4 and 6. The elimination of section 5 is most appropriately addressed by the LECs, which are parties to this proceeding.

14. Section 4 of the existing rule provides that telephone directories published at the direction of a LEC must be revised at least once every fifteen months, except when it is known that impending service changes require rescheduling of directory revision dates. The purpose of this section is to keep directories current and accurate. While logically it would appear to be in a LEC's interest to maintain accurate directories, we do not see any benefit in removing this important requirement. On the other hand, removing this requirement could result in degrading the quality and utility of White Pages directories, should they not be timely updated. Public Counsel recommends that section 4 of the existing rule not be eliminated, but rather it should be maintained as it appears in the rule currently in effect.

15. Section 6 of the existing rule requires that telephone directories published at the direction of the LEC include a consumer information guide that details the right and responsibilities of its customer. This includes important information including the process for establishing credit and determining the need and amount for deposits, procedures by which a bill becomes delinquent, steps that must be taken to disconnect service, information about Washington Telephone

Assistance Program (WTAP), federal enhanced tribal lifeline program, and rights of the customer to pursue any dispute with the company, including appropriate procedures to file an informal or formal complaint. Public Counsel is strongly opposed to eliminating the requirement that LECs provide a consumer information guide.

16. The consumer information guide is a fundamental component of basic telephone service, providing basic information regarding customer rights and responsibilities, and customers should have easy access to this information. Further, removing this requirement could serve to increase customer calls to LEC call centers due to customer questions no longer being addressed in this guide and could potentially result in increasing call-wait times for customers. Public Counsel recommends that section 6 of the existing rule not be eliminated, but rather that it be maintained as it appears in the rule currently in effect.

F. Procedural Issue Regarding Issuance of a New CR-102.

17. The Commission has requested that parties address whether a supplemental CR-102 is required prior to adoption of the revised rule. A supplemental CR-102 is required when an agency is adopting a rule that is substantially different than the rule proposed in a prior CR-102.⁶ A proposed rule is substantially different if it results in different anticipated effects, addresses different issues, or affects different individuals.⁷ The result of a supplemental CR-102 is to reopen the rulemaking for public comment on the proposed variance.⁸

⁶ RCW 34.05.340(1).

⁷ RCW 34.05.340(2), (3).

⁸ RCW 34.05.340(1).

18. The Commission issued a Notice of Opportunity to Comment on October 31, 2012, but has not issued a supplemental CR-102. The Notice states that the Commission would like comments on the revised proposed rule before issuing a new CR-102.
19. The proposed rule contained in the Notice is substantially different than the proposed rule subject to the CR-102 issued on July 20, 2012. The current proposal offers companies the option of using opt-in or opt-out, whereas the original proposed rule prescribed an opt-in approach. The current proposal removes all notice and request provisions, while the original proposed rule built in notice and request provisions. Further, the current proposal removes long-standing sections regarding updating the directories and information regarding customer rights and responsibilities, whereas the original proposed rule left those provisions intact. While the October 31, 2012 Notice calls for additional comments, the proposed rule could (and should) change as a result of the comments submitted today.
20. It is likely that the proposed rule the Commission ultimately intends to adopt will be substantially different from the original proposed rule. Thus, a supplemental CR-102 will be required before the Commission can adopt a new rule.

III. CONCLUSION

21. Public Counsel continues to support strong consumer protections and notification requirements to ensure that those who need or want residential white pages will be able to receive them. Public Counsel looks forward to participating further in this proceeding.