



March 29, 2013

**VIA ELECTRONIC FILING**

Steven V. King, Acting Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive SW  
Olympia, WA 98504-7250

Re: UT-120451 - Comments of the Washington Independent Telecommunications Association

Dear Mr. King:

The Washington Independent Telecommunications Association (WITA) is pleased to be able to file additional comments on the proposed rulemaking related to Directory Service. With one exception, WITA supports the proposed rules. WITA very much appreciates the direction that the Commission is going with this rulemaking. The proposed rules provide flexibility to local exchange carriers (LECs) in meeting obligations relating to directory service. This is a welcome approach.

However, in one aspect, the proposed rules may impose a difficult burden on LECs. WITA suspects that this potential result was unintentional. Specifically, it is draft WAC 480-120-251(2) that is problematic. As drafted, that language reads as follows:

(2) A LEC must ensure that its basic local exchange service customers have access to directory listings for the customers' local calling area by making those listings available electronically via a document, database, or link on the LEC's web site. The LEC also must distribute or arrange to distribute printed directory listings to all of the LEC's customers who request a printed directory. A LEC is not otherwise required to distribute a printed directory.

There are several facets to the problem with this language. First, there is a problem with the duty to "ensure" that customers have access to "directory listings for the customers' local calling area . . . ." Although the word "all" is not explicitly included in the language, the wording of the sentence potentially implies that the responsibility is to ensure that "all" directory listings are available. That may create an impossible burden for LECs depending on what the term "directory listings" is meant to include. If the directory listings intended by the rule are only those listings of the LEC's own customers that are published, then that duty can be met.

However, if this portion of the rule is meant to include other directory listings that may exist, such as those for CLECs that are not published in the ILEC directory for the local calling area (the EAS calling area), or directory listings, which admittedly may or may not exist, related to wireless service, the responsibility becomes more onerous.

The second facet is that it is not clear that another company's published listings can be provided by the serving LEC in electronic format to the serving LEC's customers without obtaining a license from that other company or that company's electronic directory publisher to do so. It is WITA's understanding that existing agreements between some LECs and the publishers of their electronic directory listings may include exclusivity provisions that, in effect, may operate to prohibit electronic publication by a third party, and the establishment of links to such third-party websites may or may not be permitted without the negotiation of new agreements with such third-party publishers. In some instances, such renegotiation may not be feasible until those agreements expire.

A third issue arises if the serving ILEC also conducts CLEC activities in the local calling area. For example, in the neighboring exchange of a second ILEC. This is a factual situation which exists today. It is not clear how those listings are to be handled under the proposed rule.

WITA is also concerned about the "opt-in" requirements of the proposed rule if a company decides to get out of the business of publishing a printed directory. As drafted, the proposed rule creates an "opt-in" duty to publish for the few subscribers that request a directory. That appears to be compelled speech. As pointed out in WITA's earlier comments, that approach is very expensive. In addition, for those WITA members facing competition, it imposes a cost that the competitors do not face.

To address these concerns, WITA suggests that it should be clear that the listings that must be made available are those directory listings that are publicly available as a result of publication by the incumbent local exchange carrier. Thus, WITA suggests that draft subsection (2) be written to read as follows:

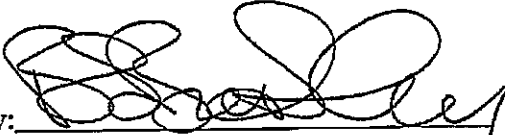
(2) A local exchange company must allow access by the local exchange customers it serves to the publicly available listings for the local exchange company's exchange area by publishing those publicly available listings electronically via a document, database, or link on the local exchange company's web site. A local exchange company is not required to distribute a printed directory.

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WITA strongly supports the direction that the Commission is going with this rulemaking and encourages the Commission to adopt the amendment to WAC 480-120-251 with the minor amendment set out above.

Sincerely,

WASHINGTON INDEPENDENT  
TELECOMMUNICATIONS ASSOCIATION

By:   
Betty S. Buckley, Executive Director