



Stephen Gerritson

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Please respond to
Stephen Gerritson

To records@wutc.wa.gov

cc

bcc

Subject Docket Number UT-060856

Comments on Threshold Legal Issues Relevant to the ACLU's Request for Investigation of Possible Violations of Rule or Law (Release of Phone Records to the National Security Agency by Long-distance Carriers)

Docket Number UT-060856

Date: June 20, 2006

Submitted by Stephen Gerritson and Michele Spector, [REDACTED]

Dear Chairman Sidran and Members of the Commission:

In response to your request for comments on this issue dated June 2, 2006, we offer the following:

1. Does WAC-480-120-202 or any other state law or regulation prohibit a regulated telephone company or its affiliated interests from providing customer telephone calling information to the NSA?

We believe that WAC-480-120-202 does prohibit such disclosure, without customer consent or a valid court order or warrant. WAC-480-120-202 deals with customer proprietary network information, or CPNI, as defined in the United States Code. WAC-480-120-202 incorporates the federal definition and the prohibition on disclosure of CPNI "except as required by law or with the approval of the customer." Federal law with respect to disclosure of records to government agencies holds that it cannot occur without a warrant, court order, or administrative subpoena.

In addition, the Washington State Constitution, state law, and State Supreme Court decisions also recognize a right to privacy (including one case affirming a constitutional right to privacy in telephone records).

2. Does the Commission have the legal authority to compel a regulated telephone company or its affiliates to disclose whether it has provided customer calling information to the NSA?

We believe that RCW 80.04.110(1) gives the Commission the authority to investigate potential violations of law with respect to disclosure of telephone company records. Regulated companies are required to cooperate with Commission investigations of customer complaints.

3. Does the Commission have the legal authority to compel regulated telephone companies or their affiliates to release relevant information about such allegations?

We believe that RCW 80.04.110(1) gives the Commission the authority to initiate and adjudicate complaints regarding any acts of violation or alleged violation of any provision of state law or any rule or order of the Commission. Further, we believe that RCW 80.01.075 gives the Commission the authority to investigate violations or purported violations of relevant

federal law.

4. Would an assertion of the military and state secrets privilege by the US government preclude the Commission from taking action against a regulated telecommunications company?

We believe that even the claim of the military and state secrets privilege requires a lawful court order or warrant, and that it is within the Commission's purview to determine a) whether there was such a lawful court order or warrant; or b) whether there was customer consent to release of the records. If not, the telephone company has violated one or more state and federal laws. The Commission may take action against a telephone company for violation of state law.

5. If the Commission decides to investigate the matter raised in the ACLU's May 25, 2006, letter, which procedural options would be most appropriate?

We believe that, because the fact of unauthorized disclosure has not been established, the appropriate procedural option would be a formal investigation. If the initial facts warrant it, the Commission could exercise its subpoena power if necessary to obtain and review the pertinent records.

In summary, we urge you to undertake this investigation on behalf of the citizens of Washington who, like ourselves, feel that an unauthorized disclosure of long-distance telephone records by our telecommunications company would be a breach of faith as well as a violation of state law.

Thank you for the opportunity to comment on this issue.

Sincerely,

Stephen Gerritson
Michele Spector

Steve Gerritson