

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST, INC.

Respondent.

DOCKET NO. UT-060962

COMMENTS ADDRESSING
STAFF'S OPPOSITION TO
CONFIDENTIALITY OF
REDACTED INFORMATION

I Commission Staff (Staff) submits the following comments pursuant to the Commission's Notice of Opportunity to Address Confidential Information. Staff opposes that the information currently redacted in the filed Complaint, Staff Investigation Report, and Addendum should remain confidential. Staff requests that the Commission, if it issues a protective order in this proceeding, exempt from that order the information now redacted. AT&T has indicated to Staff and the Commission that it believes the aggregate number of alleged improperly billed calls, records, monetary amount of overcharges, and 2number of violations should remain confidential. AT&T's primary argument appears to be that information earlier provided to Staff under a claim of confidentiality remains confidential, even in an aggregated form. Staff disagrees.¹

¹ See Complaint, Notice of Opportunity to Address Confidential Information, Paragraph 22. Although Staff sought a statement from AT&T regarding its position prior to the complaint being filed, it received only vague

I. APPLICABLE LAW

2 It is declared public policy in Washington State that government be conducted in public, and that the records of public agencies be open. RCW 42.56.030, *et. seq.* These general policies are subject only to certain specified and carefully drawn exceptions. The statutes do provide for confidential treatment of certain commercial information filed with the Commission. *See* RCW 42.56.330 and RCW 80.04.095. Commission rules provide for the handling of confidential information. *See* WAC 480-07-160. Protective orders are an appropriate mechanism for protecting confidential information, and are authorized under RCW 34.05.446, WAC 480-07-420 and 480-07-423. Information for which protection is sought under such an order, however, must meet the statutory definitions of RCW 80.04.095, which, in pertinent part, provides protection for:

Valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage, and network configuration and design information. RCW 80.04.095

“Customer Proprietary Network Information” (CPNI) is defined in federal law, and distinguished from “aggregate customer information” in terms of ability to disclose such information.²

responses. Informally, AT&T mainly asserted that the aggregate information should be treated as confidential per RCW 80.04.095 because it discloses traffic volume and location information maintained as customer proprietary network information, even in aggregate form. Staff disagrees with AT&T’s informal assertions. However, the parties agreed to preserve the issue for Commission determination. *See* May 10, 2007, letter to Carole J. Washburn from Gregory J. Kopta, counsel for AT&T.

² The Telecommunications Act defines “Customer Proprietary Network Information” as follows: “(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier, 47 U.S.C.A. § 222 (h)(1). In contrast, “Aggregate Information” that can be disclosed, is defined as: “collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed, 47 U.S.C.A. § 222 (h)(2).”

3 Any party may challenge a claim of confidentiality, and if such a claim is
challenged, the burden of proof to show that such information is properly classified as
confidential is on the party asserting confidentiality. WAC 480-07-160.

4 Under WAC 480-07-423(3), a “confidential” designation is “intended to protect
information that might compromise a company’s ability to compete fairly or that otherwise
might impose a business risk if disseminated without the protections in a protective order.”
Parties must strictly limit the amount of information they designate as confidential, or highly
confidential. WAC 480-07-423(1). This is an appropriate standard to evaluate the
confidential designation of the aggregate data.

II. ARGUMENT

A. **The Public has the right to know the Number of Alleged Violations and Resulting Overcharges that are Currently Redacted.**

5 The information as provided in an aggregate form is essential to the Commission’s
factual determination and analysis. Each alleged improperly-billed call corresponds to an
alleged statutory violation. Thus, maintaining the confidentiality of alleged aggregate
improper calls likely also requires maintaining confidentiality of the aggregate alleged
violations in the Commission’s fact-finding process. This would be an absurd result. Any
Commission fact finding should incorporate a discussion of this information, and should be
conducted in the open as much as possible. In addition, aggregate overcharges, also
designated confidential, measures the overall impact of the alleged violations on customers
generally. Maintaining this as confidential, would unreasonably broaden the terms of a
protective order. Indeed, the public has the right to know this information. In light of the
policy that parties must strictly limit the amount designated as confidential, it would not
serve the public interest, nor the interest of the Commission in the exercise of performing its

statutory duties, to restrict access to this aggregate data only to a select few by virtue of a protective order.

B. The Aggregate Information is not Customer Proprietary Network Information.

6 Staff disagrees that the aggregate redacted information should be broadly construed as CPNI. While AT&T responded during staff's investigation with documents labeled "confidential" in their entirety, on the basis that they contained CPNI, the aggregation of that data eliminates any CPNI concern.³ While AT&T may or may not be entitled to confidentiality of the original documents (which are not in the public record), this does not entitle AT&T to a ruling that aggregated data should be held confidential. The aggregate data contains no individual customer identities and characteristics. There is no content information, destination, duration, time of call, amount billed, or revenue generated for any customer or class of customers disclosed. Calling location is aggregated, as are the number of billing records. AT&T has not sufficiently shown that the aggregated information should be protected as CPNI.

C. The Redacted Aggregate Information does not Warrant Confidentiality Protection on other Grounds.

7 The redacted information would not compromise AT&T's ability to compete fairly, or impose a business risk to the company, as intended by a "confidentiality designation" under WAC 480-07-423. In fact, AT&T is no longer in the business of providing any

³See Attachment A, August 15, 2006, e-mail cover from Greg Kopta to UTC Records Center. Although not attached here, Staff is willing to provide documents to the Commission that are under seal for in-camera review, if the Commission believes viewing those documents would aid in its determination of a confidentiality issue.

telephone services to the inmate population. The business was sold to another company in July 2005.⁴

D. The Aggregate Call Volume Information for which Protection is Sought is Public Information.

8 The Department of Corrections (DOC) made this information public when it solicited bids from vendors for its inmate telephone system. As shown in the attachments B and C, which were obtained from the DOC, the DOC has made aggregate call volume data available to potential bidders as part of its competitive bid process for prison collect telephone services. The 2005 Request for Proposals (RFP) and questions and answers, provided to potential bidders, show aggregate collect call information, by facility, type, and number of minutes, for the June 2004 – July 2005 calling period.⁵ In light of this significant fact, it would make no sense to preserve the confidentiality of similar, although even *less* comprehensive aggregated data in this proceeding.

9 Second, there is little business risk presented to AT&T if the redacted information is disseminated because, as the filed materials indicate, and as stated above, AT&T sold the prison collect calling business at issue in July 2005.⁶ The Commission should find that dissemination of this information will in no way compromise AT&T's present ability to compete fairly.

⁴ AT&T response to Order to Produce Records, UT-060962, Affidavit of John Hyland, August 15, 2006.

⁵ In Attachment B, for example, RFP section 2.1 contains aggregate calling data across institutions. In Attachment C, Question 46 asks: "can WA DOC please provide the most recent 12 months of call detail (total number of calls, total number of minutes) broken down by local, intralata-interstate, interlata-intrastate, and interstate?"

Attachment C, 46A answers by providing a chart with the requested information for June 2004 – July 2005. (The complaint and investigation relates to data within this time period)

⁶ See generally, AT&T's Response to Order to Produce Records, UT-060962, August 15, 2006.

III. CONCLUSION

10 Staff appropriately challenges the confidentiality of the redacted information, and requests that the Commission amend the Complaint and the Investigation report to include the currently-redacted data, and make it public. Staff believes that, for the reasons stated above, AT&T cannot meet its burden of showing that the information should remain confidential.

DATED this 20th day of June, 2007.

Respectfully submitted,

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