

## NEW SECTION

### **WAC 480-120-201 Definitions.**

The definitions in this section apply to WAC 480-120-202 through 216.

**“Call detail”** means:

(a) Any information that identifies or reveals for any specific call, the name of the caller, the name of any person called, the location from which a call was made, the area code, prefix, any part of the telephone number of any participant, the time of day of the call, the duration of a call, or the cost of a call;

(b) The aggregation of information in (a) of this subsection up to the level where a specific individual is associated with information on calls made to a given area code, prefix, or complete telephone number, whether that information is expressed through amount spent, number of calls, or number of minutes used and whether that information is expressed in monthly, less-than-monthly or greater-than-monthly units;

(c) The aggregation of the information in (a) of this subsection up to the level where a specific individual is associated with general calling patterns (e.g. peak, off-peak, weekends) or amounts spent expressed on a less-than-per-month basis;

(d) The number of calls that are answered or unanswered and information related to them that provide information by time of the day, day of the week, or by week or weeks up to but not including by month.

Call detail does not include information other than (a), (b) and (c) of this subsection compiled on a monthly basis. For example, it does not include the monthly amount spent on long distance calls or the monthly amount spent on ancillary services. It does include, for example, the monthly amount spent calling area code XXX, and the number of unanswered calls between the hours of 8:00 A.M. and 5:00 P.M. and the number of unanswered calls on Tuesdays.

**“Customer proprietary network information (CPNI)”** means (a) Information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service, including call detail, and that is made available to the company by the customer solely by virtue of the customer-company relationship, which includes information obtained by the company for the provision of the telecommunication service; and (b) Information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a company; except that CPNI does not include subscriber list information.

**“Company”** means any telecommunications company as defined in RCW 80.04.010.

**“Private account information”** means customer proprietary network information that is associated with an identifiable individual.

**“Subscriber list information (SLI)”** means any information:

(a) Identifying the listed names of subscribers of a company and those subscribers' telephone numbers, addresses, or primary advertising classifications (as such

classifications are assigned when service is established), or any combination of listed names, numbers, addresses, or classifications; and

(b) That the company or an affiliate has published, caused to be published, or accepted for publication in any directory format.

**“Telecommunications-related products and services”** means:

(a) The offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used; or

(b) Services offered over common carrier transmission facilities which employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber’s transmitted information, provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information; or

(b) Equipment employed on the premises of a person to originate, route, or terminate telecommunications.

**“Telecommunications service”** means the offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used.

**“Telemarketing”** means contacting a person by telephone in an attempt to sell one or more products or services.

#### NEW SECTION

##### **480-120-202 Use of Customer Proprietary Network Information Permitted.**

Customer proprietary network information may be used as permitted by 47 U.S.C. Section 222 except where sections 480-120-202 through 216 require otherwise.

#### NEW SECTION

##### **480-120-203 Using a customer's call detail information.**

(1) Except as provided in this section and WAC 480-120-205, a company may not use, disclose, or permit access to a customer's call detail information, unless the customer has given explicit written (“opt-in”) approval.

(2) Without seeking or obtaining customer approval, a company may use, disclose, or permit access to a customer’s call detail information to the extent necessary to:

(a) Initiate, render, coordinate, facilitate, bill, and collect for telecommunications services the customer has purchased or requested;

(b) Protect the rights or property of the company, or to protect users of those services and other companies from fraudulent, abusive, or unlawful use of, or subscription to, such services;

(c) Resolve formal and informal complaints communicated to the company or commission by an applicant or customer;

(d) Provide records to a data base management system, as defined in WAC 480-120-340, or to any other database used in the provision of enhanced 9-1-1 or 9-1-1 service, or perform any other service for enhanced 9-1-1 or 9-1-1 purposes; and

(e) Comply with any applicable law, or any governmental rule, regulation or order, or any subpoena or other demand of apparently lawful authority.

#### NEW SECTION

##### **480-120-204 Using private account information in the provision of services.**

Without seeking or obtaining customer approval, a company may use, disclose, or permit access to a customer's private account information to the extent necessary to:

(1) Initiate, render, coordinate, facilitate, bill, and collect for telecommunications services the customer has purchased or requested;

(2) Protect the rights or property of the company, or to protect users of those services and other companies from fraudulent, abusive, or unlawful use of, or subscription to, such services;

(3) Resolve formal and informal complaints communicated to the company or commission by a customer or applicant;

(4) Provide records to a data base management system, as defined in WAC 480-120-340, or to any other database used in the provision of enhanced 9-1-1 or 9-1-1 service, or perform any other service for enhanced 9-1-1 or 9-1-1 purposes; and

(5) Comply with any applicable law, or any governmental rule, regulation or order, or any subpoena or other demand of apparently lawful authority.

#### NEW SECTION

##### **480-120-205 Using private account information during an inbound call.**

A company may use, disclose, or permit access to a customer's private account information to the extent necessary to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if:

(1) Such call was initiated by the customer; and

(2) During the call and prior to the company's use of the information, the customer expresses approval for the company to use the information during the call.

#### NEW SECTION

##### **480-120-206 Using private account information for marketing telecommunications-related products and services and other products and services.**

(1) Unless the customer directs otherwise, a telecommunications company and any entity under common control of or with the telecommunications company, may use a customer's private account information, with the exception of call detail, to offer or

market telecommunications-related services and other products and services. Such company or entity may not disclose or permit access to private account information outside the company or entity unless a company has obtained approval under WAC 480-120-209, except that it may provide information to agents that are contractually bound to use the information only for the purposes permitted by this rule and to make no other use, or disclose, or permit access to the private account information.

(2) A company may not use a customer's private account information as provided for in subsection (1) of this section unless it has provided notice to each customer pursuant to WAC 480-120-207 and provides the customer with reasonable opportunity to direct the company not to use the information ("opt- out") pursuant to WAC 480-120-208.

## NEW SECTION

### **480-120-207 Notice when use of private account information is permitted unless a customer directs otherwise (“opt-out”).**

(1) This section applies when a company, pursuant to WAC 480-120-206, uses a customer’s private account information unless the customer directs otherwise (“opt-out”). If a company that is permitted to use the opt-out method voluntarily uses the opt-in method, the requirements of WAC 480-120-209 will apply.

(2) A company may not use a customer’s private account information pursuant to WAC 480-120-206 unless, at least once in the past year, the company has provided a written notice to the customer, as provided for in this section, and provides the customer with a reasonable opportunity to opt-out at any time.

(3) The written notice must be mailed separately from any advertising or promotional material. It may be included with the customer's bill.

(4) The written notice must be posted on the company's web site and must be readily accessible from the company's home page.

(5) Any opt-out notice must include the following items:

(a) A statement that the name, address, and telephone number, if published in the telephone directory, are not private information and will not be withheld from telemarketers if the customer opts-out;

(b) A statement that private account information may be used to market (i) telecommunications-related products and services, or (ii) other products and services, or both (i) and (ii), whichever applies;

(c) A statement that the customer has a right to direct the company not to use the customer’s private account information and that doing so will not affect the provision of any services to which the customer subscribes;

(d) A disclaimer that an opt-out directive for private account information does not prevent the company from making telephone solicitation or telemarketing calls to the customer and does not prevent the company from including the customer’s listed name, address, and telephone number in lists sold, leased or provided to other firms. This disclaimer is not required if the company’s practice is to exclude customers who opt-out of private account information use from use or disclosure for telemarketing purposes or if the company does not sell, lease, or directly provide such lists to other firms;

(e) A statement that the customer should expect to receive written confirmation within thirty days of the directive and suggest that the customer call the company if the confirmation is not received by this time;

(f) A prominent statement of specific instructions by which the customer can direct the company not to use the customer's private account information. The dedicated opt-out telephone number required by WAC 480-120-208(2)(a) must be printed in bold type and in a size larger than the body of the notice.

(6) The notice must be in plain language and must not be misleading.

(7) The notice must be clearly legible, in twelve-point or larger type.

(8) A company may state in the notice that the use of private account information may enhance the company's ability to offer products and services tailored to the customer's needs, if such a statement is accurate.

(9) A company may state in the notice that the customer, upon affirmative written request, may compel the company to provide private account information to any person.

(10) If the company has a website, it must provide a link on the home page that is labeled "Customer Privacy" that will take a reader to the notice required in this section and the telephone number required in WAC 480-120-208(2)(a).

## NEW SECTION

### **480-120-208 Mechanisms for opting out of use of private customer account information.**

(1) This section applies when a company, pursuant to WAC 480-120-206, uses a customer's private account information unless the customer directs otherwise ("opt-out").

(2) At a minimum, companies must allow customers to opt-out using the following mechanisms, which must be provided by the company:

(a) Calling a dedicated, toll-free telephone number that provides access to a live or automated operator at all times. The telephone number must be accessible from all areas of the state and customers must have the option to direct the company to not use their private account information ("opt-out") without receiving additional information from the company before giving their directive;

(b) Calling any telephone number that the company provides for billing or customer service inquiries. This subsection permits companies to transfer customers directly to the number required in (a) of this subsection;

(c) Marking a box or blank on the notice and returning it to a stated address;

(d) Returning a postage-paid card included with the notice;

(e) Electronic mail, if the company otherwise receives or sends electronic mail messages to its customers; and

(f) Submitting an opt-out form found on the company's web site. The opt-out form must be directly linked to the written notice required by WAC 480-120-207. The web site must be accessible to the public using generally available browser software.

(3) A company may require, as part of any opt-out mechanism, that the customer comply with reasonable procedures to verify the identity of the customer. Any opt-out

verification procedure must be no more burdensome on the customer than any verification procedure used by the company when a customer provides explicit ("opt-in") approval or orders additional services on an existing account.

#### NEW SECTION

#### **480-120-209 Notice when explicit ("opt-in") approval is required and mechanisms for explicit approval.**

(1) This section applies when explicit ("opt-in") approval of the customer is required for a company to use, disclose, or permit access to a customer's private account information.

(2) A company must maintain records of customer notification and approval.

(3) Any solicitation for explicit customer approval must be accompanied by a written notice to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's private account information. The notice must state that private account information includes all information related to specific calls initiated or received by a customer.

(a) The notice must state that the customer has a right under federal and state law to protect the confidentiality and limit the use, disclosure, and access to the customer's private account information.

(b) The notice must state that the company has a duty under federal and state law to protect the confidentiality of private account information and to comply with the customer's limitations on use, disclosure of, and access to the information.

(c) The notice must state the types of information that constitute private account information. If a company is seeking explicit approval to use, disclose, or permit access to call detail information, the notice must specify that private account information includes the telephone numbers of all calls made or received by the customer.

(d) The notice must specify the names of entities, including affiliates, subsidiaries and companies under common control, which may receive private account information and whether the private account information can be used, disclosed, or accessed by any entity or person other than the company providing the notice.

(e) The notice must describe each purpose for which private account information can be used, disclosed, or accessed and specifically disclose whether the private account information can be used to market services to the customer.

(f) The notice must inform the customer that approval by the customer is voluntary and that no action is required to protect the customer's private account information.

(g) The notice must inform the customer that deciding not to approve will not affect the provision of any services to which the customer subscribes.

(h) The notice must be comprehensible and must not be misleading.

(i) The notice must be clearly legible, in twelve-point or larger type, and be placed so as to be readily apparent to a customer.

(j) If any portion of a notice is translated into another language, then all portions of the notice must be translated into that language.

(k) A company may state in the notice that the customer's approval to use, disclose, or permit access to private account information may enhance the company's

ability to offer products and services tailored to the customer's needs, if the statement is accurate.

(l) A company may state in the notice that the customer, upon affirmative written request, may compel the company to disclose the customer's private account information to any person.

(m) The notice must state that any approval for use, disclosure of, or access to private account information may be revoked or limited at any time.

(n) The notice must state that the customer should expect to receive written confirmation within thirty days and suggest that the customer call the company if the confirmation is not received by this time.

(4) Opt-in approval by the customer must be:

(a) In writing and may be made by e-mail; or

(b) Orally, if the oral approval is verified by an independent third-party using substantially the same procedures as provided in WAC 480-120-139(1)(c).

(5) The following table illustrates information identified in subsection 208 and 209 and whether it would be considered to require explicit "opt-in" permission, an "opt-out" directive or is not covered by the rule.

### Customer Approval Method Depends on the Type of Information and How the Company Will Use It

Type of Activity	Type of Information		
	Call Detail (identifies specific calls)	Other Private Account Information	Aggregate CPNI
Activities necessary to provide service or to comply with the law	No approval required.	No approval required.	Not covered by the rule.
Inbound customer service and marketing	Oral opt-in, good for duration of call.	Oral opt-in, good for duration of call.	Not covered by the rule.
Market new versions of existing services	Opt-in.	Opt-out.	Not covered by the rule.
Market telecom and telecom-related services	Opt-in.	Opt-out.	Not covered by the rule.
Market non-telecom-related services	Opt-in.	Opt-out.	Not covered by the rule.

Disclose to commonly controlled company	Opt-in	Opt-out.	Not covered by the rule.
Disclose to other companies	Opt-in.	Opt-in.	Not covered by the rule.

NEW SECTION

**480-120-211 Confirming change in approval status.**

(1) Each time a company receives a customer's "opt-out" directive or explicit "opt-in" approval, the company must confirm in writing the change in approval status to the customer within thirty days. The written confirmation must be mailed to the customer's billing address, but may be sent to the customer's e-mail address if the directive was sent to the company by e-mail, and must be separate from any other mail from the company. The confirmation must include a summary of the effect of the customer's opt-out or opt-in choice and must provide a reasonable method to notify the company if the company made an error in changing the customer's approval status.

(2) A company may not use, disclose, or permit access to a customer's private account information based on a customer's explicit "opt-in" approval until three weeks after mailing the confirmation to the customer.

NEW SECTION

**480-120-212 Duration of customer approval or disapproval.**

Any "opt-out" directive or explicit "opt-in" approval received by a company will remain in effect until the customer revokes, modifies, or limits such directive or approval.

NEW SECTION

**480-120-213 Safeguards required for using private account information.**

Every company has a duty to protect the confidentiality of private account information.

(1) Companies must train all personnel who have access to private account information as to when they are and are not authorized to use, disclose, or permit access to private account information, and companies must implement an express disciplinary process to deal with violations of the requirement.

(2) Companies must establish a supervisory review process regarding company compliance with rules governing use, disclosure of, or access to private account information for outbound marketing situations and must maintain records of company compliance for at least two years. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request.



(3) Companies must have an officer, as an agent of the company, sign a compliance certificate on an annual basis stating the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with rules concerning private account information and call detail. The company must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules on this topic. The certificate and the compliance statement must be filed with the company's annual report to the commission.

#### NEW SECTION

##### **480-120-214 Disclosing customer proprietary network information.**

A company must disclose any or all customer proprietary network information upon affirmative written request by the customer, to any person designated by the customer.

#### NEW SECTION

##### **480-120-215 Using privacy listings for telephone solicitation.**

(1) A local exchange company may not make telephone solicitation or telemarketing calls using its list of customers with nonpublished or unlisted numbers unless it has notified each such customer at least once in the past year that the company makes such calls to its customers with nonpublished or unlisted numbers and that the customer has a right to direct that the company make no such calls.

(2) When the company provides the notice required in subsection (1) of this section in writing, the notice must include a toll-free number and an e-mail address the customer may use to state that solicitation should not be made.

(3) When the company provides the notice in subsection (1) of this section by phone call, the customer must be informed that inclusion in a solicitation list may be declined and if declined, the company must not make any additional solicitation.

#### NEW SECTION

##### **480-120-216 Using subscriber list information for purposes other than directory publishing.**

If a company uses or provides subscriber list information for purposes other than directory publishing, it must exclude from use or disclosure the subscriber list information of any customer who subscribes to a privacy listing, including a nonpublished or unlisted number, or who directs the company to exclude subscriber list information relating to his or her service.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- 480-120-144 Use of privacy listings for telephone solicitation.
- 480-120-151 Telecommunications carriers' use of customer proprietary network information (CPNI).
- 480-120-152 Notice and approval required for use of customer proprietary network information (CPNI).
- 480-120-153 Safeguards required for use of customer proprietary network information (CPNI).
- 480-120-154 Definitions.