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May 17, 2002

Ms. Carole J. Washburn, Executive Secretary  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive SW  
Olympia, WA 98504-7250

Re: Docket No. UT-990146 – Proposed Rules WAC 480-120-201 – 209,  
211 – 216 – Customer Information

Dear Ms. Washburn:

These comments are submitted on behalf of the Washington Independent Telephone Association (WITA).

First and foremost, WITA expresses its thanks to the Commissioners for participating in workshops on this matter. WITA realizes that the Commissioners are under an unusually heavy workload this year. Thus, the time and effort spent by the Commissioners in attending workshops and evaluating comments made at those workshops is even more appreciated by WITA's members.

WITA believes that the participation of the Commissioners in the workshops has led to important modifications of the initial drafts of the rules, which reflect the concerns expressed by those participating in the workshops. This results in a product that is much more likely to serve the public interest in a meaningful way.

WITA does have some comments on the rules as proposed for adoption. These comments fall in two categories. The first category is the substantive

comments, which are few. The second category are comments on language usage and typographical errors, which are also few.

### Substantive Issues

#### (1) WAC 480-120-201 Definitions

The Commission is proposing to adopt a definition of the term “call detail.” This is not a term that is used in the Federal Communications Commission’s (FCC) rules on the same subject. WITA does not object to the adoption of a definition of the term “call detail,” but it is WITA’s position that the definition proposed for these rules goes too far. In particular, WITA believes that the aggregation of the call detail information, specifically, subsections (b), (c) and (d) should not be subject to “opt-in” requirements. This type of aggregate information can be useful in providing services to the benefit of the customer. WITA suggests that the definition of call detail be limited to that provided in subsection (a). This protects information that a customer would reasonably expect to be protected from disclosure without specific approval for release. A person would not normally have an expectation that the more general calling pattern information, such as to a particular area code, would not be disclosed without their advance, written approval.

It should also be noted that subsection (d) needs to be amended to cross-reference the information in (a). Otherwise, subsection (d) is ambiguous and could be interpreted to refer to the total calling volumes experienced by the company, not necessarily associated with a specific individual, that are answered or unanswered, etc. This type of more general information is not the subject of the rule, but, as written, that ambiguity exists given that subsections (b) and (c) do contain the cross reference to the information in (a).

#### (2) WAC 480-120-208

WITA has three substantive comments about this proposed rule. First, under proposed WAC 480-120-208(2)(a), each company is required to have a “dedicated, toll-free telephone number” for purposes of opting out. Many of WITA’s members are very small companies serving a few hundred or a few thousand access lines. While it is not a burdensome expense to have a separate line installed solely for purposes of handling “opt-out” requests, it seems to be a wasteful use of resources to have a separate line with a separate number that may be called only ten times over the course of a year. WITA suggests that a provision be added that for those companies with less than 50,000 access lines, the central office customer service line will suffice. For WITA’s members with 50,000 access

lines or less, that number is a toll-free number within the local calling area.

There is a second issue that is raised by subsection (2)(a). That subsection goes on to require that the toll-free telephone number must provide “access to a live or automated operator at all times.” For most of WITA’s members, this presents a very practical problem. As noted above, WITA’s members serve relatively small customer bases. They do not have in place 24-hour, seven-day-a-week access to a live or automated operator. WITA notes that the term “automated operator” is not defined. If all that is meant by that term is a voice mail message box where the customer can leave a message, then compliance is relatively easy. If something more is meant, then this portion of the rule becomes problematic for WITA’s smaller members, and should be deleted or amended to exempt companies with less than 50,000 access lines.

The third comment on this particular rule is that requiring both subsection (2)(c) and (d) is confusing. WITA suggests that the notice provided to the customer provide either a box or blank on the notice or a postage paid card included in the notice that can be returned, but not both. Otherwise, there will be a great deal of customer confusion about how they respond to the “opt-out” options.

(3) WAC 480-120-213

The final substantive comment<sup>1</sup> relates to the requirement contained in proposed WAC 480-120-213(3). This rule parallels the FCC rule. However, it includes an additional requirement that the certificate and compliance statement must be filed with the company’s annual report to the Commission. The Commission lacks the statutory authority to impose such a requirement on those local exchange telecommunications companies serving fewer than two percent of the access lines in the state. See RCW 80.04.530(2).

Language Drafting Issues

(1) WAC 480-120-201

The Commission’s definition of Customer Proprietary Network Information parallels that adopted by the FCC. In doing so, the Commission includes the terms “toll exchange service” and “telephone toll service.” These terms are defined in the FCC’s rules and the statutes that apply to the FCC.

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<sup>1</sup> Although it does not affect WITA’s members, since they have no plans to use call detail information, WITA does note in passing that the option requirements and applications may still have First Amendment difficulties.

Similar definitions do not exist on the state level. Most of the Commission's definitions have gone away from using the term "telephone" and instead use the term "telecommunications." WITA suggests that the Commission either reference the federal definitions for these terms or substitute the term "local exchange telecommunications service" for "telephone exchange service" and delete the word "telephone" from the term "telephone toll service."

(2) WAC 480-120-202

The second line of this rule references WAC 480-120-202. It may be more appropriate if the initial reference is to WAC 480-120-203.

(3) WAC 480-120-203

In subsection (1), there should be a cross-reference to WAC 480-120-204, which also allows use of certain information, including call detail, in order to provide service, etc. Therefore, it would appear to be very important to include the reference to WAC 480-120-204 as well.

(4) WAC 480-120-214

This section has a slight ambiguity in it. That ambiguity is whether or not a person may designate the release of the CPNI of another customer. That result does not appear to be the intent of the rule. Therefore, WITA suggests that this subsection be rewritten as follows:

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

Conclusion

WITA thanks the Commission for the opportunity to comment on these rules. WITA respectfully requests that the Commission take into account the comments set forth above in promulgating the final rules.

Sincerely,

RICHARD A. FINNIGAN

RAF/km

cc: Terrence Stapleton