

No. 79977-6

SUPREME COURT OF THE STATE OF WASHINGTON

INDOOR BILLBOARD/WASHINGTON, INC.,
individually and on behalf of a class of persons and/or entities
similarly situated,

Appellant/Cross-Respondent,

v.

INTEGRA TELECOM OF WASHINGTON, INC.,

Respondent/Cross-Appellant.

ANSWERING BRIEF OF RESPONDENT/CROSS-APPELLANT TO
AMICI CURIAE BRIEFS

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I. INTRODUCTION

Amici the Attorney General of Washington and the Washington State Trial Lawyers Association Foundation ("WSTLA") suggest that the Court should relax the current causation requirement in a private Consumer Protection Act ("CPA") action, urging the Court to abandon the requirement of reliance. But neither amicus suggests that the CPA does not require causation. Because of the undisputed facts in the summary judgment record below, this case is not the platform to address the question of whether reliance is required.

The Court need not reach that question because Indoor Billboard failed to present evidence that any act of Integra caused its alleged injury. Rather, the undisputed evidence shows that Indoor Billboard investigated the nature of the allegedly deceptive "PICC" surcharge and agreed to subscribe to Integra's service – knowing that Integra would charge a PICC surcharge in the amount of \$4.21 per line, knowing that the PICC surcharge was not a federally mandated or regulated charge, and fully expecting to see that charge on its bills – because Integra was offering the most competitive total price, including the PICC surcharge, for the quality of service it offered. Further, Indoor Billboard agreed to pay Integra's invoices, despite disputing the PICC surcharge, because it was satisfied with the quality of service Integra provided and because it wanted to start off its relationship with Integra on a good note.

Repeating points made in Indoor Billboard's briefs, the Attorney General also argues that Integra's labeling its surcharge "PICC" was an unfair or deceptive practice under the CPA and that the WUTC does not have exclusive jurisdiction over Indoor Billboard's claim. On the unfair or deceptive practice element, the Attorney General again ignores the undisputed facts in the summary judgment record; this is not a motion to dismiss where the plaintiff's allegations are accepted as true. On the issue of the WUTC's exclusive original jurisdiction, the Attorney General does not attempt to harmonize the express grant of the WUTC's exclusive original jurisdiction over this type of claim with the legislature's exemption of competitive companies from the regulated industries exception to the CPA.

II. ARGUMENT

A. Labeling Integra's Surcharge a "PICC" Is Not an Unfair or Deceptive Practice

As explained in Integra's prior briefing, labeling its surcharge "PICC" was not an unfair or deceptive practice. As the undisputed summary record shows, it certainly did not deceive Indoor Billboard.

The Attorney General first contends that "Integra is not an incumbent company, so it has no reason to charge a PICC to recover the costs of the local loop facility, as contemplated by the FCC." (AG Br. at 8.) The Attorney General makes the same claim Indoor Billboard did in its Complaint, that it was unlawful under the FCC's rules for Integra to charge a PICC surcharge because it is not an incumbent local exchange

company ("ILEC"). (CP 45-46.) As Integra demonstrated in its motion for summary judgment, the FCC regulations upon which Indoor Billboard originally relied, and which the Attorney General now uses to support its argument, do not forbid competitive local exchange carriers (CLECs) like Integra from assessing and collecting a surcharge labeled "PICC." (CP 95-97.) In fact, Indoor Billboard conceded on appeal that no regulation prohibits Integra from assessing and collecting its surcharge labeled "PICC." ("Indoor Billboard does not contend that Integra's practice of assessing a 'PICC' surcharge is rendered unfair and deceptive by virtue of some regulatory prohibition of its assessment of such a surcharge." (Appellant Br. at 29.))

The Attorney General also argues that "[t]he practice of separating the price of goods or services into discrete charges that are designed to look like government mandated or regulated fees has the capacity to deceive a substantial number of consumers" for two reasons. (AG Br. at 8.) First, the Attorney General argues that this practice makes it difficult for consumers to compare prices between providers. (*Id.*) Second, the Attorney General argues that presenting the PICC surcharge as a "tax or surcharge" leaves consumers with the impression that the charge is "a government imposed fee that cannot be avoided by obtaining service from another carrier." (*Id.* at 8-9.) In making these arguments, the Attorney General ignores the undisputed facts in the summary judgment record.

Integra never represented to Indoor Billboard that its PICC surcharge was "government mandated or regulated." To the contrary,

Integra specifically informed Indoor Billboard's vice president, James Shulevitz (who is an attorney), that Integra sets the amount of this surcharge, not the FCC (CP 164). At the same time, one of Integra's competitors, Eschelon, informed Mr. Shulevitz that the PICC surcharge is not "federally mandated" and is "not regulated by the government;" rather, the amount of the PICC surcharge is determined by each company (CP 169, 171).

Moreover, there is nothing inherent in the label "PICC" that has the capacity to deceive customers into believing that Integra's PICC surcharge is a governmentally regulated tax or fee. The label "PICC" has no "decisive connotation" as an FCC-regulated tax or fee. *See Robinson v. Avis Rent A Car System, Inc.*, 106 Wn. App. 104, 119, 22 P.3d 818 (2001). Using the label "PICC" alone does not constitute an unfair or deceptive practice. *Compare Pickett v. Holland Am. Line-Westours, Inc.*, 101 Wn. App. 901, 6 P.3d 63 (2000) (capacity to deceive where contract signed by consumers falsely described "port charges and taxes" as a direct pass-through of the "governmental charges, taxes and fees" assessed on the defendant), *rev'd on other grounds*, 145 Wn.2d 178, 35 P.3d 351 (2001), *cert. denied sub nom., Bechick v. Holland Am. Line-Westours, Inc.*, 531 U.S. 941 (2002).

Moreover, placing the PICC surcharge on Integra's billing invoice under the heading "Taxes and Surcharges" is neither deceptive nor does it convey that the PICC surcharge is a governmentally imposed fee. A "surcharge" is "[a] sum added to the usual amount or cost." American

Heritage College Dictionary 1365 (3d ed. 1997). Integra disclosed the surcharge at the time it quoted its price for services to Indoor Billboard, and never misrepresented the nature of the surcharge to Indoor Billboard. In this case, the location of the PICC surcharge on Integra's invoice is irrelevant to Indoor Billboard's CPA claim because Integra disclosed the PICC surcharge to Indoor Billboard well in advance of Indoor Billboard's receiving an invoice. *See Robinson*, 106 Wn. App. at 116 ("the relevant time period for purposes of analyzing whether full disclosures are made" is when a business quotes a price to a potential customer). The Attorney General dismisses Integra's disclosure of the PICC surcharge in its initial price quote to Indoor Billboard and then ignores the actual representations that Integra made to Indoor Billboard regarding the PICC surcharge.

The Attorney General relies on *Dwyer v. J.I. Kislak Mortgage Corp.*, 103 Wn. App. 542, 13 P.3d 240 (2000), to argue that Integra's billing invoice "camouflages" part of its price as a "government mandated or regulated fee," leads customers to believe that the charge is outside of Integra's control, and "obscures the actual price" of Integra's services. (AG Br. at 9.) Contrary to the facts in *Dwyer*, there is no information on Integra's billing invoice that would cause the placement of the PICC surcharge under the heading "Taxes and Surcharges" to have the capacity to deceive a customer into believing the PICC surcharge was a government mandated or regulated fee.

In *Dwyer*, the mortgage payoff statement used by the defendant contained the following representation about its "Misc Service Chgs":

"This statement reflects the amount needed to prepay this mortgage in full" *Id.* at 544. The charge at issue was not part of the required payoff amount pursuant to the deed of trust. *Id.* at 545. Under those facts, the court concluded that "[a] plain reading of [the] statement considered in light of its purpose reveals its capacity to deceive a substantial portion of the public." *Id.* at 547. A plain reading of Integra's billing invoice, on the other hand, does not reveal a capacity to deceive a substantial portion of the public into believing that the PICC surcharge listed under the heading "Taxes and Surcharges" is a government mandated or regulated fee.

The Attorney General also argues that Integra's practice of charging a PICC surcharge "makes it difficult for consumers to effectively compare service prices among different providers" (AG Br. at 8.) Again, the Attorney General's argument is based on hypothetical facts, not the facts of this case. Here, Indoor Billboard had no problem comparing the prices offered by Integra and its competitors. Mr. Shulevitz of Indoor Billboard compared the total price offered by Integra, including its disclosed PICC surcharge, with the prices offered by competitors, including their PICC surcharges and other charges (CP 131, 167, 169, 175). In fact, he specifically compared the different PICC surcharges among competitors (*Id.*). Indoor Billboard decided to purchase Integra's services after shopping the market. Indoor Billboard concluded that Integra's service price, including the PICC surcharge, was the most competitive price for the high-quality services offered (CP 152). Contrary to the Attorney General's argument, Integra's PICC surcharge did not

obscure the "actual" price of Integra's service or impede Indoor Billboard's ability to compare service prices among providers.

In summary, when it decided to purchase Integra's services, Indoor Billboard knew that Integra would include a \$4.21 per line PICC surcharge on its billing invoice, that Integra sets the amount of the PICC surcharge, not the FCC, and that Integra would not remit any portion of the surcharge to the government (CP 120, 128-30). With these disclosures, Integra's labeling the surcharge "PICC" did not have the capacity to deceive Indoor Billboard or other consumers into believing the charge was a government mandated or regulated fee. The Court must consider the representations actually made to Indoor Billboard in determining whether the alleged practice had the capacity to deceive. *See Robinson*, 106 Wn. App. at 120-21 (affirming summary judgment for defendant on CPA claim and considering representations actually made to plaintiffs in determining that plaintiffs failed to establish an unfair or deceptive act or practice). The Court should reject the arguments made by both Indoor Billboard and the Attorney General because Indoor Billboard failed to establish that Integra's "PICC" surcharge was an unfair or deceptive practice.

B. Indoor Billboard Failed to Establish Causation

1. Indoor Billboard failed to establish that any deceptive act caused its alleged injury

The Attorney General and WSTLA both acknowledge that Indoor Billboard must "prove a causal link between the unfair or deceptive

practices and [its alleged] injury," *i.e.*, payment of \$60.35 in PICC surcharges. (AG Br. at 10; WSTLA Br. at 8 (CPA requires proof of cause-in-fact or proximate cause).) WSTLA even concedes that evidence of reliance may be relevant in some CPA cases to establish cause-in-fact. (WSTLA Br. at 10.) However, according to the Attorney General and WSTLA, to establish causation, Indoor Billboard need prove only that Integra charged a PICC surcharge and Indoor Billboard paid that surcharge. (AG Br. at 13; WSTLA Br. at 10.) This overly simplistic view of causation ignores the record of the independent causes of Indoor Billboard's decision to pay the invoice from Integra and would water down the causation requirement to be almost meaningless.

The Court does not need to reach the issue of whether reliance is required to establish causation because Indoor Billboard did not establish that any deceptive act *caused* its alleged injury. The undisputed facts show that Indoor Billboard questioned and challenged Integra's right to charge a surcharge labeled "PICC" from the moment Integra first disclosed that charge (CP 123). Indoor Billboard's Mr. Shulevitz was under the impression at that time that a PICC surcharge could be imposed only if Indoor Billboard obtained long-distance service from Integra (CP 165); however, Integra informed Indoor Billboard that Integra would charge the PICC surcharge regardless of whether Indoor Billboard obtained long-distance service from Integra (CP 164). Indoor Billboard independently investigated the propriety of that charge, including making inquiries to third parties (CP 126-27, 129-30, 167, 169, 171). During its

investigation, Indoor Billboard learned that Integra's PICC surcharge was not mandated or regulated by the government, but was set by Integra itself (CP 164, 169, 171). Armed with all of this information, Indoor Billboard chose to subscribe to Integra's services and committed itself to paying all applicable charges, including the disclosed PICC surcharge (CP 120, 128-130).

Both the Attorney General and WSTLA overlook these facts and skip ahead to when Integra received its first billing invoice. Even at that time, Indoor Billboard's decision to pay the PICC surcharge was not based simply on Integra's inclusion of the charge on its invoice. When it received Integra's invoice – which included the PICC surcharge in amount of \$4.21 per line, as Indoor Billboard fully expected – Indoor Billboard decided to investigate further the nature and propriety of the PICC surcharge. Indoor Billboard called Integra, the WUTC, and the FCC (CP 131, 134-41, 144-49, 178-79). Indoor Billboard's Mr. Shulevitz also consulted with a sales agent for several telecommunications providers in his quest to obtain ammunition to "combat" the PICC surcharge (CP 179).¹ At the conclusion of that second investigation, Indoor Billboard decided to pay the PICC surcharge to start its relationship with Integra on a good note (CP 147-48). Based upon these facts, the trial court correctly concluded

¹ In his email, Mr. Shulevitz wrote: "I just got my Integra bill and the PICC charge is on it. Do you have the regs on this or something to combat the bill?" (CP 179.)

that Integra's use of the label "PICC" was not the proximate cause of Indoor Billboard's alleged injury, paying those charges.

While both the Attorney General and WSTLA agree that Indoor Billboard must prove that a deceptive act was the proximate cause of its alleged injury, their argument that Indoor Billboard met this standard in this case is without support in these facts. To establish causation, it was Indoor Billboard's burden on summary judgment to produce evidence that "but for" Integra's labeling the surcharge "PICC," Indoor Billboard would not have subscribed to Integra's service or paid this disputed charge. As the trial court correctly concluded, Indoor Billboard agreed to purchase and pay for Integra's service *despite* its labeling the surcharge "PICC," not *because* of it.

The conclusory analyses and the simplistic view of causation offered by the Attorney General and WSTLA ignore Indoor Billboard's questioning of and investigating the nature and propriety of the PICC surcharge. Indoor Billboard's decision to pay the PICC surcharge, rather than to contest the charge, was based on its own investigation and its determination not to contest the charge. Indoor Billboard thoroughly questioned, disputed, and investigated the PICC surcharge at the time it decided to subscribe to Integra's services and again before paying the PICC surcharge. The amici argue that Indoor Billboard established causation only by ignoring all of these facts.

2. Indoor Billboard must establish that it relied on Integra's alleged misrepresentation to show causation

The principal issue raised by the amici is that the courts should never require a private plaintiff bringing a CPA claim to prove reliance to establish causation. As explained above, the Court need not reach that issue in this case, because Indoor Billboard failed to establish causation even if reliance is not required.

If the Court does reach this issue, the Court should affirm the numerous decisions of the Court of Appeals that reliance is required in some categories of private CPA cases. *See Robinson*, 106 Wn. App. at 119 ("A plaintiff establishes the causation element of a CPA claim if he or she shows the trier of fact that he or she relied upon a misrepresentation of fact.").²

Notably, Integra is not contending that proof of actual reliance is required to establish causation for *every* CPA claim. For example, in *Escalante v. Sentry Insurance*, 49 Wn. App. 375, 387, 743 P.2d 832 (1987), the Court of Appeals recognized that a party may state a CPA claim against an insurer for bad faith handling of an insurance claim. Proof of reliance has no place in the causation analysis in such a claim.

² *See also Nuttall v. Dowell*, 31 Wn. App. 98, 111, 639 P.2d 832 (1982) (causation is not established if actual reliance on misrepresentation is not proven); *Transamerica Title Ins. Co. v. Johnson*, 103 Wn.2d 409, 418, 693 P.2d 697 (1985) (affirming summary judgment dismissal where party asserting CPA claim had not shown reliance on representations and, thus, any injury "was not the result of" any act or practice in violation of the CPA); *Mayer v. Sto Indus., Inc.*, 123 Wn. App. 443, 458, 98 P.3d 116 (2004) (citing *Nuttall*), *rev'd in part on other grounds*, 156 Wn.2d 677, 132 P.3d 115 (2006).

As another example, the CPA provides that a violation of RCW 9.08.070 constitutes a per se violation of the CPA. RCW 19.86.145. RCW 9.08.070 prohibits "[w]illfully or recklessly kill[ing] or injur[ing] any pet animal . . . with intent to deprive the owner thereof." In such a CPA claim, the causal link between causing the injury or death of a plaintiff's pet and the plaintiff's injury has nothing to do with reliance, and to require proof of reliance in such a case would be meaningless.

On the other hand, in a CPA claim where a private plaintiff alleges the defendant made an affirmative misrepresentation, the plaintiff should be required to prove that it relied on that misrepresentation to establish the element of causation, as the Court of Appeals has long held. This Court should decline the invitation of the amici to overrule this line of precedent. (WSTLA Br. at 10.)

While the amici agree that reliance was a required element of a CPA claim before this Court's decision in *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 719 P.2d 531 (1986), they argue that requirement simply did not survive that decision. (WSTLA Br. at 7; Attorney General Br. at 12.) WSTLA cites this Court's later decisions in *Schmidt v. Cornerstone Investments*, 115 Wn.2d 148, 795 P.2d 1143 (1990), and *Washington State Physicians Ins. Exch. v. Fisons Corp.*, 122 Wn.2d 299, 858 P.2d 1054 (1993), for the proposition that this Court has employed a "cause-in-fact" analysis that does not consider reliance in these two post-*Hangman Ridge* decisions. (WSTLA

Br. at 9.) Neither of these cases, however, holds that proof of reliance is not required.

In *Schmidt*, the Court's causation analysis is relatively brief. The Court held that a causal link was proven by the plaintiffs' testimony that "had they not been shown the inflated appraisal [the deceptive act], they never would have made the investment which led to the injury they now complained of." 115 Wash.2d at 168. While the Court did not use the term "reliance" to describe this causal link, it is clear that the concept of reliance or inducement is at least implicit in that statement.

Fisons, on the other hand, is a case involving a failure to warn, rather than an affirmative misrepresentation. 122 Wash.2d at 314. Again, this Court did not discuss the issue of reliance in *Fisons*. However, in another non-CPA case involving a failure to disclose, cited by WSTLA, this Court distinguished between claims involving an affirmative misrepresentation as compared to a failure to disclose with respect to the requirement that a plaintiff prove reliance to establish causation.

Morris v. International Yogurt Co., 107 Wn.2d 314, 729 P.2d 33 (1986), involved a claim under the Franchise Investment Protective Act, RCW 19.100, which makes it unlawful for a person to "omit[] to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading." RCW 19.100.170(2). The plaintiff argued that "proof of the franchisor's failure to disclose a material fact itself establishes causation in fact" 107 Wash.2d at 327. The Court rejected that argument, but held that proof of

omission of a material fact establishes a rebuttable presumption of reliance. *Id.* at 329-30. In so ruling, the Court still required a showing of reliance to establish causation, but created a presumption of reliance, which the defendant has the opportunity to rebut. *Id.*

In reaching its decision, the *Morris* Court found it important to distinguish omission cases from those involving affirmative misrepresentations: "The inquiry that would normally be made in a case of affirmative misrepresentation – did the plaintiff believe the defendant's representation, and did that belief cause the plaintiff to act – does not apply in a case of nondisclosure." *Id.* at 328. The *Morris* decision affirms the long-established rule that plaintiffs who claim that an affirmative misrepresentation caused their injury must prove that they relied on that misrepresentation to establish causation.

This Court has already decided that the plain language of the CPA requires Indoor Billboard to demonstrate that an unfair or deceptive practice *caused* Indoor Billboard's injury. Requiring proof of reliance to establish causation in CPA claims involving an alleged misrepresentation, like Indoor Billboard's claim, is logical. If a CPA plaintiff claims its injury was caused by the defendant's misrepresentation, proof of reliance establishes the necessary causal link between the alleged misrepresentation and the plaintiff's injury. Accordingly, the Court has required proof of reliance on a misrepresentation in other contexts. For example, a plaintiff asserting a claim of negligent misrepresentation must

prove actual reliance. *See, e.g., Esca Corp. v. KPMG Peat Marwick*, 135 Wn.2d 820, 826, 959 P.2d 651 (1998).

It is worth noting that the Attorney General is *not* required to prove reliance when it brings a CPA claim. Under RCW 19.86.080, the State may bring an action to enjoin an unfair or deceptive act or practice and may seek restitution. The State does not need to establish that a consumer has been injured by the alleged unfair or deceptive act or practice for the court to enjoin the act or practice. *See Blewett v. Abbot Laboratories*, 86 Wn. App. 782, 790, 938 P.2d 842 (1997), *rev. denied*, 133 Wn.2d 1029, 950 P.2d 475 (1998). Because the State is not required to prove causation, it is not required to prove reliance. Thus, retaining the requirement that a private plaintiff prove reliance in a misrepresentation case under the CPA will not affect the State's ability to bring CPA claims, and should alleviate the Attorney General's professed concern that proof of reliance is "contrary to the public policies underpinning the CPA." (AG Br. at 14.)

C. The WUTC Has Exclusive Original Jurisdiction Over This Claim Challenging the Unreasonableness or Unlawfulness of a Charge Assessed by a Public Service Company

The Attorney General repeats Indoor Billboard's argument that only the superior court had jurisdiction to adjudicate this CPA claim. The Attorney General argues that, even though Indoor Billboard's claim is within the scope of WUTC jurisdiction under RCW 80.04.220-.240, that jurisdiction is not exclusive because Integra is a "competitively classified company," which does not enjoy immunity from CPA claims for all of its

activities under RCW 19.86.170. (AG Br. at 19.) The Attorney General, however, does not address the narrow issue raised by Integra's motion to dismiss for lack of jurisdiction, nor does it square its argument with the plain language of RCW 80.04.220-.240.

Washington law authorizes the WUTC to hear claims against a public service company "concerning the reasonableness of any rate . . . or charge" (RCW 80.04.220), or alleging that the company has charged a customer "in excess of the lawful rate" (RCW 80.04.230). Under the express language of RCW 80.04.240, that agency's jurisdiction is exclusive, so that if a claim is within the scope of these statutes, it must be brought before the agency and "*neither the supreme court nor any superior court shall have jurisdiction save in the manner hereinbefore provided.*" RCW 80.04.240 (emphasis added.)

Like Indoor Billboard, the Attorney General does not dispute that Indoor Billboard's claim is within the scope of RCW 80.04.220-.240. Nor can either party dispute that Integra is a public service company. Thus, the Attorney General concedes that the WUTC has jurisdiction "to hear complaints regarding competitive companies that arise under Title 80." (AG Br. at 19-20.) Moreover, the Attorney General does not dispute that RCW 80.04.240 vests exclusive jurisdiction in the WUTC for claims against at least some public service companies. The Attorney General, however, fails to demonstrate how that jurisdiction may be exclusive for some public service companies but not others, and there is nothing in the language of that statute that would support that conclusion.

The Attorney General gives no effect to its concession that Indoor Billboard's claim falls within the WUTC's jurisdiction under RCW 80.04.220-.240, or to the express statutory language establishing the exclusive nature of that jurisdiction. Instead, the Attorney General simply contends that because Integra is a competitive telecommunications company that may not claim an exemption from the CPA under RCW 19.86.170, the superior court must have jurisdiction over Indoor Billboard's CPA claim. The argument advanced by the Attorney General focuses solely on the fact that Integra is classified as a competitive telecommunications company that does not enjoy the same immunity from CPA claims as other public service companies as the result of RCW 80.36.360. The nature of Indoor Billboard's claim, however, is the key consideration in determining whether the WUTC has exclusive original jurisdiction over Indoor Billboard's claim pursuant to the express language of RCW 80.04.220-.240, not whether Integra is a competitive telecommunications company or some other type of public service company. *See D.J. Hopkins v. GTE Northwest*, 89 Wn. App. 1, 947 P.2d 1220 (1997).

The Attorney General makes no attempt to harmonize the express language of RCW 80.04.220-.240 with RCW 19.86.170 and RCW 80.36.360. Instead, the Attorney General merely concludes that the "WUTC retains jurisdiction to hear complaints regarding competitive companies that arise under Title 80, but that jurisdiction is not exclusive for complaints against competitively classified companies." (AG Br. at

19-20.) That argument fails to address the express grant of exclusive original jurisdiction to the WUTC in RCW 80.04.220-.240, and implicitly advocates for the Court to create an exception to RCW 80.04.240 that was not enacted by the legislature.

Integra does not contend that it is exempt from a private consumer CPA claim under RCW 19.86.170, nor does it dispute that consumers may bring a variety of CPA claims against Integra and other CLECs. For example, a claim that a competitive telecommunications company engaged in false advertising by telling prospective customers that the company offered the clearest, most reliable connection when, in fact, the company offered a static-plagued connection that was worse than its competitors' offerings, may well be cognizable under the CPA. Under RCW 80.36.360, a competitive telecommunications company may not claim it is exempt from CPA liability for such a claim. A traditional telephone company, on the other hand, may be immune from CPA liability for such a claim under RCW 19.86.170 if its conduct was subject to regulation by the WUTC. Nor would Integra argue that such a claim is within the exclusive jurisdiction of the WUTC under RCW 80.04.220-.240, because that sort of claim does not challenge the reasonableness or lawfulness of rates. On the other hand, Indoor Billboard's claim does challenge one of Integra's charges as being unreasonable or unlawful and, therefore, lies within the exclusive original jurisdiction of the WUTC.

The scope of RCW 80.04.220-.240 expressly includes claims against competitive telecommunications companies, and nothing in

RCW 19.86.170 or RCW 80.36.360 detracts from the exclusive nature of the WUTC's jurisdiction over such claims. The Court should reject the Attorney General's arguments and conclude that the WUTC has exclusive original jurisdiction over Indoor Billboard's claim. If the Court reaches Integra's assignment of error on cross-review, the Court should reverse the trial court's order denying Integra's motion to dismiss, and affirm the dismissal of this action.

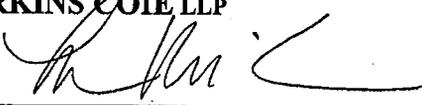
III. CONCLUSION

For the reasons discussed above and in Integra's earlier briefs, this Court should affirm the trial court's summary judgment decision or, in the alternative, affirm the judgment by reversing the trial court's order denying Integra's motion to dismiss.

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Respectfully submitted,

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Attached for filing is the Answering Brief of Respondent/Cross-Appellant to Amici Curiae Briefs in Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc., State of Washington Supreme Court Case No. 79977-6. This document is being served by the email on counsel of record, as previously arranged. Confirmation of receipt is appreciated. Should you have any difficulty in opening the attached file, please call Diane Anderson at 503.727.2107.

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