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83673-6

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SUPREME COURT  
STATE OF WASHINGTON

QUALCOMM INCORPORATED,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF REVENUE,

Respondent.

**FILED**  
JAN 27 2010  
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STATE OF WASHINGTON

AMICUS MEMORANDUM OF  
WASHINGTON TRUCKING ASSOCIATIONS

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A. INTRODUCTION

The Washington Trucking Associations (“WTA”), the principal trade association for Washington’s trucking industry, submits this amicus memorandum to the Court on the petition for review filed by Qualcomm Inc. (“Qualcomm”). WTA’s interest in the case is set forth in its motion for leave to file an amicus memorandum.

It is interesting that both Qualcomm and the Department of Revenue (“DOR”) speak to the customer’s reasons for purchasing Qualcomm’s Omni TRACS service, both its basic and more advanced form. For example, DOR states in its Answer at 14: “The relevant question is what Qualcomm’s customers are seeking when they buy this service.” WTA is in the best position to speak for Qualcomm’s trucking industry customers. Those customers are not buying a “data transmission” service when they purchase Qualcomm’s service; they are buying processed data or information. The Court of Appeals was wrong in its basic premise about what trucking companies want from the service. *Qualcomm Inc. v. Dep’t of Revenue*, 151 Wn. App. 892, 907, 213 P.3d 948 (2009).

This Court should grant review to forestall an interpretation of RCW 82.04.065(27) predicated upon a plainly wrong factual assumption.

## B. STATEMENT OF THE CASE

WTA acknowledges the statements of the case provided by Qualcomm in its petition and DOR in its answer. Qualcomm's description of its Omni TRACS system in its petition at 4-7 is critically important to this Court's analysis. DOR's assertion that such a system is primarily designed "to provide communication between the hardware and the software," answer at 2-3, is a vast oversimplification of the system's purpose.<sup>1</sup> Its additional assertion that the principal focus of the system is for mobile messaging with text messages, answer at 3, 7-8, betrays a misunderstanding of the uses to which the trucking industry places services like Qualcomm's. Messaging in that industry can easily be handled with other forms of communication like CB radios, or cell phones with texting capacity. Trucking firms would not need such an expensive system as Qualcomm's Omni TRACS if messaging was the functionality required by such firms.

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<sup>1</sup> WTA's member trucking firms would not need Qualcomm's service for voice or simple text messaging. The technology actually eliminates messaging while the vehicle is moving, a significant safety issue. The Qualcomm units on the trucks communicate information to the Qualcomm network hub. The Qualcomm network hub translates the data using Qualcomm proprietary algorithms to put the data into formats that customers can use to manage their businesses and then transmits the formatted data across (customer paid for) dedicated lines to the customers. Those customers lines are taxed and paid for by the trucking firms. A large portion of the information collected by the firms is required by the Federal Motor Carriers Safety Act and is used to monitor driver behavior to ensure that drivers are driving in a safe manner.

The major reason WTA's members employ a system like Qualcomm's Omni TRACS is to secure reliable information about the operation of long haul trucks out over the road. Unlike most employers who can supervise their employees working at a fixed location, trucking firms cannot observe and supervise truck drivers in semis (tractor/trailers) driving over large distances on the highway system away from the firm's principal physical locations. No supervisors can observe the drivers. WTA's members have no desire to pay drivers who take circuitous routes to pad their compensation or who stop and linger for extended periods at rest stops or truck stops.<sup>2</sup>

Qualcomm's Omni TRACS system is a management tool for WTA's members designed to ensure that drivers are taking the most direct and efficient route to deliver goods, and that they are not stopping over at particular sites for excessive periods. With Omni TRACS, a trucking firm will know where its tractors are located and similarly where its trailers are located. It can learn about the tractor/trailer's hours of service.<sup>3</sup>

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<sup>2</sup> Compensation for long haul truck drivers is usually on a cents-per-mile driven, rather than hourly basis precisely because paying long haul drivers on an hourly basis would offer incentives to circuitous routes and other delays. See *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 153 P.3d 846 (2007) (addressing regulation converting other forms of compensation like cents per mile into hourly wages for purposes of Washington's overtime wage statute).

<sup>3</sup> This information also has useful management purposes to improve planning related to estimated times of arrival and for advising shippers as to arrival times for deliveries. Pet. at 5.

In its more extended version, the Omni TRACS system further evidences its management purpose as it can convey information to trucking firms about tractor/trailer fuel use, the speed at which the driver is driving (to avoid traffic tickets and convey information about driver safety and reliability), and the time a driver is idling. For example, the firm can learn of trailer connects/disconnects, temperature updates on refrigerated cargo, mileage travelled, RPM and MPH data, hard braking by the driver, and arrival/departure data. All of information is derived from processing of data and is employed by WTA member trucking firms for management purposes. Pet. at 6-7.

DOR's answer is enamored with the technology by which the Omni TRACS system operates, answer at 3-8, but at its most basic, WTA's members are not buying a telecommunication system, they are buying a tool that provides processed data or information that serves a vital management function.

### C. ARGUMENT

The application of RCW 82.04.065(27)<sup>4</sup> by the Court of Appeals is at odds with this Court's decision in *Community Telecable of Seattle, Inc. v. City of Seattle*, 164 Wn.2d 35, 186 P.3d 1032 (2008). Merely because

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<sup>4</sup> The Tennessee Court of Appeals correctly analyzed a similar statute in *Qualcomm Inc. v. Chumley*, 2007 WL 2727513 (Tenn. App. 2007), recognizing that telecommunications was not Omni TRACS' prime purpose – the tracking service was.

telephonic-like facilities are employed to provide a service does not render the service taxable as telephonic or data transmission services.<sup>5</sup> This Court emphasized the fact that internet services involve the transformation and manipulation of data, not merely its transmission, in reaching its decision in *Community Telecable*, 164 Wn.2d at 44.

~~RCW 82.04.065(27) exempts from taxation telecommunications~~ services involving data processing and information services where the purchaser's primary purpose is the processed data or information. As noted *supra*, WTA's members are not buying Qualcomm's Omni TRACS system for a telecommunication purpose, they are buying the data it processes, data vital to their management of their businesses, data that allows them to properly supervise drivers and ensure efficient deliveries.

#### D. CONCLUSION

WTA asks this Court to grant review of the published Court of Appeals decision. RAP 13.4(b)(1, 4). The Court of Appeals makes an erroneous assumption about why trucking industry customers buy Qualcomm's service. The Court's opinion, predicated upon that erroneous assumption, will result in a major tax increase to a significant component

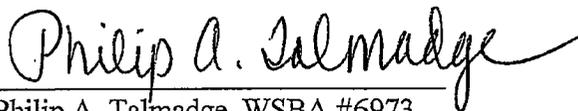
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<sup>5</sup> This fact renders the Court's decision in *Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 998 P.2d 884 (2000) distinguishable. The paging system at issue there was merely a communication system highly analogous to a traditional phone service. *Id.* at 602, 609-11. The Court of Appeals here correctly concluded, Qualcomm's system was not like Western Telepage's. 151 Wn. App. at 901-02.

of Washington's trucking industry at a time when that industry is ill-equipped to incur it. The Court's decision will also raise disruptive questions about taxation of companies whose products may have a telecommunications feature.

DATED this 20th day of January, 2010.

Respectfully submitted,



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DECLARATION OF SERVICE

On said day below I emailed and mailed by U.S. Mail a true and accurate copy of the following document: WTA's Motion for Leave to File Amicus Curiae Memorandum and Amicus Memorandum of Washington Trucking Association in Supreme Court Cause No. 83673-6 to the following:

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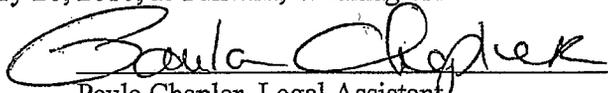
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: January 20, 2010, at Tukwila, Washington.

  
Paula Chapler, Legal Assistant  
Talmadge/Fitzpatrick

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Per Mr. Talmadge's request, attached please find the WTA's Motion for Leave to File Amicus Curiae Memorandum and Amicus Memorandum of Washington Trucking Association for filing in the following case:

Case Name: Qualcomm Inc. v. State of Washington, Dept. of Revenue  
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Sincerely,

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