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**COURT OF APPEALS, DIVISION  
OF THE STATE OF WASHINGTON**

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QUALCOMM INCORPORATED,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

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**RESPONDENT'S ANSWER TO AMICUS CURIAE  
MEMORANDUM**

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## I. INTRODUCTION

The amicus brief filed by the Washington Trucking Associations (“WTA”) seeks to introduce arguments based on irrelevant and unsupported factual assertions. Like Qualcomm, WTA improperly conflates the functions of the OmniTRACS Mobile Communications System that includes hardware and software previously purchased by the customers, with the functions of the monthly OmniTRACS service that primarily provides a communication link between the hardware and software owned by the customers.

Only the sale of the OmniTRACS service is at issue in this case, not the entire OmniTRACS Mobile Communications System. Given WTA’s failure to distinguish between the operation of the OmniTRACS Mobile Communications System and the OmniTRACS service, WTA’s amicus brief provides no sound arguments for accepting review.

## II. ARGUMENT

### A. **WTA’s Amicus Brief Provides No Reason For Granting Review Because It Relies On Irrelevant And Unsupported Representations.**

WTA’s primary reason for urging the Court to accept review is its assertion that the Court of Appeals made an erroneous factual assumption about the reason Qualcomm’s customers purchase the OmniTRACS Mobile Communications System. However, WTA misinterprets the

Court of Appeals' decision and fails to cite any evidence to support its contention.

The Court of Appeals' analysis focused on the nature of the OmniTRACS service and not the entire OmniTRACS Mobile Communications System because the taxation of the OmniTRACS hardware and software was not at issue. *Qualcomm Inc. v. Dep't of Revenue*, 151 Wn. App. 892, 895, 213 P.3d 948 (2009). In contrast, the WTA amicus brief focuses entirely on how trucking companies use the OmniTRACS Mobile Communications System without recognizing that almost all of the information is created and processed by hardware and software already owned by the customers, not by the OmniTRACS service at issue. WTA Amicus Br. at 2-4; Answer to Pet. at 7-8. Thus, WTA's amicus brief does not rebut the Court of Appeals' conclusion that the OmniTRACS service was primarily used to transmit information.

The Court of Appeals correctly concluded that the OmniTRACS service primarily provided data transmission because "[a]ll of the data ... is created by the customer's shipping activity, not by Qualcomm. The record simply does not suggest that Qualcomm manipulates the data in any relevant way." *Qualcomm*, 151 Wn. App. at 907. WTA makes no effort to show that the Court of Appeals' reading of the record was

incorrect or that Qualcomm manipulates the data in any significant way.<sup>1</sup> WTA Amicus Br. at 2-4. WTA only asserts that the OmniTRACS Mobile Communications System is a “tool that provides processed data or information that serves a vital management function.” *Id.* at 4.

However, as explained in the Department’s Answer to the Petition for Review, the operation of the system as a whole is irrelevant. *See* Answer to Pet. at 13-14. The sole issue before the court is the taxability of the monthly OmniTRACS service provided by Qualcomm that links the customer’s hardware and software, not functions of the hardware and software owned by the customers. *Id.*

Even if the operation of the OmniTRACS Mobile Communications System were relevant, WTA fails to show that the system was not used primarily as a means of transmitting information between the trucks and the dispatch centers. Contrary to WTA’s assertion, the record suggests that the major value of the OmniTRACS Mobile Communications System is its ability to transmit the truck’s location and vehicle information back to the customer’s dispatch center in a timely manner, regardless of

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<sup>1</sup> WTA asserts, without citation, that the “Qualcomm network hub translates the data using Qualcomm proprietary algorithms to put the data into formats that customers can use...” WTA Amicus Br. at 2 n.1. Nothing in the record supports this claim, nor does WTA cite any source of which the Court could take judicial notice. Therefore, the Court should not consider WTA’s unsupported assertion. *See Sherry v. Financial Indem. Co.*, 160 Wn.2d 611, 615, 160 P.3d 31 (2007) (declining to consider facts recited in the briefs but not supported by the record).

whether the truck is near a telephone or even in cell phone range. *See* CP 102 (“Using our nationwide two-way satellite link, you can rapidly locate your trucks anywhere and contact them anytime”). The Court of Appeals also noted that Qualcomm’s advertising materials describe the system as a “two-way, mobile satellite communications system.” *Qualcomm*, 151 Wn. App. at 906.

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WTA asserts, again without citation, that messaging is not an important part of the OmniTRACS Mobile Communications System because it can be handled by other forms of communication such as cell phones. WTA Amicus Br. at 2. However, this contention is also contradicted by the record. Qualcomm’s brochure states: “OmniTRACS is a two-way mobile satellite communications system that allows dispatchers and drivers to exchange text messages. It also provides vehicle location and performance data.” CP 240, Appendix A. Qualcomm goes on to declare: “[w]ith the OmniTRACS system, a company can maintain two-way contact with its vehicles and drivers 24 hours a day.” CP 241, Appendix A. These statements and other evidence in the record demonstrate that a major aspect of the OmniTRACS Mobile Communications System is its ability to send special text messages, which are easier to send and more useful than regular text messages, without relying on cell phone reception. *See* Answer to Pet. at 7-8; CP 102, 240-

41. Thus, WTA's assertion that a cell phone or CB radio is an adequate replacement for the messaging function of the system is incorrect.

As noted above, WTA asserts that the OmniTRACS Mobile Communications System is a "tool that provides processed data or information that serves a vital management function." WTA Amicus Br. at 4. WTA also states that, unlike most employers, trucking companies cannot observe their employees, as they drive far away from the firm's principal physical locations. *Id.* at 3. But these statements do not establish that the primary purpose of the system is to provide processed information. Without the ability to transmit the information from the trucks to the companies' dispatch centers in a timely and efficient manner over long distances, the information would have little value to the companies. *See* CP 241, Appendix A. Accordingly, WTA's arguments fail to show that transmission of information is not the primary function of the OmniTRACS Mobile Communications System.

Since nothing in the record or the amicus brief shows that the Court of Appeals made any erroneous assumptions about the primary purpose of the OmniTRACS service at issue, WTA's arguments provide no support for granting review.

**B. The Court Of Appeals' Decision Is Consistent With This Court's Decision In *Community Telecable*.**

WTA also argues that the Court of Appeals' decision 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). WTA Amicus Br. at 4.

WTA's argument is premised on its assertion that the OmniTRACS Mobile Communication System is not used primarily for communication. *Id.* at 5. As explained above, that assertion is irrelevant and unsupported by the record. WTA's argument also fails to recognize that the Court in *Community Telecable* was applying a statutory exemption for "internet service" in RCW 82.04.297 that does not apply here. *Community Telecable*, 164 Wn.2d at 43-44. There was no discussion of the true object test in *Community Telecable* because the City admitted Comcast was selling cable Internet service to its customers, which the Court held was exempt from tax as an "internet service" under RCW 82.04.297.<sup>2</sup> *Id.* at 42, 44. Thus, the *Community Telecable* decision has little bearing on the current case.

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<sup>2</sup> The discussion in *Community Telecable* opinion regarding data manipulation was dicta responding to the City's argument that Comcast was merely providing transmission to and from the site of an internet provider. *Community Telecable*, 164 Wn.2d at 44.

WTA also seems to argue that the Court of Appeals based its decision on a conclusion that “telephonic-like facilities are employed” to provide the OmniTRACS service. WTA Amicus Br. at 5. This assertion is also incorrect. The Court of Appeals based its decision on the conclusion that the primary purpose of the OmniTRACS service was to provide a communications link between the customer’s equipment on the trucks and the software at the dispatch center. *Qualcomm*, 151 Wn. App. at 907.

As such, the Court of Appeals’ decision does not conflict with this Court’s holding in *Community Telecable* and the Court should not accept review based on the alleged conflict.

### III. CONCLUSION

WTA’s amicus brief presents no sound arguments for granting Qualcomm’s petition for review and, therefore, the Court should deny the petition.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of February,  
2010.

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# How the OmniTRACS® System Works

## OmniTRACS System Overview

This chapter provides a basic overview of the OmniTRACS® mobile communications system and how its various components interact to send and receive messages.

The OmniTRACS system is a two-way, mobile satellite communications system that allows dispatchers and drivers to exchange text messages. It also provides vehicle location and performance data.

Topics in this chapter include:

- Why the OmniTRACS System Makes Companies More Efficient* . . . . . 1-2
- OmniTRACS System Component Description* . . . . . 1-2
- What is the QASPR System?* . . . . . 1-3
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If you have technical questions while reviewing this chapter, please contact QUALCOMM Wireless Business Solutions® (QWBS) Customer Support. QWBS Customer Support is staffed 24 hours a day, 365 days a year:

In the United States, call 800-541-7490  
 In Canada, call 800-863-9191  
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**Why the OmniTRACS System Makes Companies More Efficient**

With the OmniTRACS system, a company can maintain two-way contact with its vehicles and drivers 24 hours a day. The following are just a few of the advantages:

- The dispatcher can send pickup and delivery information directly to the drivers, keeping the vehicles on the road.
- The dispatcher knows when each vehicle is expected to arrive at its location, and can pass that information on to the customer.
- The system provides the dispatcher with vehicle location and position history information by tracking the location of each mobile communications terminal (MCT) using the latitude and longitude or distance and direction from landmarks (usually large towns and cities).
- Drivers can inform the dispatcher of road conditions or problems they may be experiencing.
- Various optional devices allow the monitoring of driver performance, engine diagnostics, trailer locations, and refrigeration status.
- Various decision support software enables customers to optimize assets and inform shipper and consignees on the status of their loads.

**OmniTRACS System Component Description**

The OmniTRACS system consists of these major components:

<b>Component</b>	<b>Description</b>
Network Management Facility (NMF)	This facility is responsible for processing and managing the message traffic between the dispatch center and the fleet. Within the NMF is the Network Management Computer (NMC), which actually receives and handles the message traffic. The NMF is located at QUALCOMM, Inc., in San Diego, CA.
QUALCOMM Dispatch Software (QTRACS)	This is the software on the trucking company's dispatcher computer. This is the dispatcher's interface with the OmniTRACS system. It allows the dispatcher to send and receive messages, request MCT location information, and perform other dispatcher functions. QTRACS/400 and QTRACS/Windows customers communicate with the NMC via dialup using PPTP or a frame relay connection. QTRACS/Web customers communicate via the NMC using RI/Web client over a PPTP connection.
Data Satellite (uses Ku-band signals)	This satellite handles all two-way message traffic between the vehicle and the NMC. Located approximately 22,300 miles over the equator at 103° west longitude (south of Texas).

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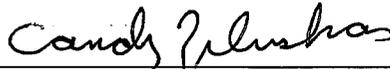
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 12th day of February, 2010, at Olympia, WA.



CANDY ZILINSKAS, Legal Assistant

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