

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NO. UT-990946
	)	
Complainant,	)	COMMISSION STAFF'S
	)	RESPONSE TO RECONEX'S
	)	MOTION FOR SUMMARY
1-800 RECONEX, INC.,	)	DETERMINATION
	)	
Respondent.	)	
_____	)	

I. INTRODUCTION/SUMMARY OF ARGUMENT

The Staff of the Washington Utilities and Transportation Commission (Staff) hereby responds to 1-800-RECONEX, Inc.'s (Reconex's) Motion for Summary Determination pursuant to the Notice of Continuance entered by Judge Hendricks in this docket on May 16, 2001. Staff's Motion for Summary Determination, which was filed as a cross motion the same day as that of Reconex, anticipated the arguments made by Reconex in its Motion on the main issue of whether the company should be required to pay the full \$121,000 in penalties related to system improvements or some lesser amount, so there is little to add by way of response to those arguments.

Reconex did, however, raise an additional issue in its Motion which Staff has not already addressed in its own Motion. Staff will respond to Reconex's argument that it should be allowed to pay in installments whatever amount of penalties the Commission ultimately imposes upon it. Staff's position is that Reconex should not be allowed to pay in installments because to do so would be inconsistent with the purpose of penalties—

namely, to cause the company discomfort. In the alternative, if the Commission does wish to entertain Reconex's request, Staff would recommend that the company be required to offer better evidence of hardship, such as through a sworn statement as to the profitability (or lack of profitability) of its Washington operations.

## II. ARGUMENT

Reconex argues that it should be granted permission to pay in installments the \$45,000 in stipulated penalties, plus any penalties adjudged to be owing pursuant to the resolution of the system improvement issue.

1. Reconex has presented no real evidence of hardship.

The company argues that “[p]ayment of such an amount in a one-time lump sum payment would be a hardship for Reconex.” Reconex Motion for Summary Determination at p. 7. The only evidence offered in support of this assertion is (1) some general observations about the difficulties that competitive local exchange companies (CLECs) face in competing with incumbents, (2) a trade press article from May/June of 2000 in which the author states that none of 375 competitive local exchange companies had yet generated any earnings, and (3) reference to the “recent proliferation of CLEC bankruptcies.” *Id.* The implication seems to be that Reconex is not generating profits and may be in danger of bankruptcy, though the company offers no evidence specific to Reconex.

As to Reconex arguments about the difficulty of competing against “one hundred year old monopolies,” it is not at all a given that Reconex faces meaningful competition from ILECs or, for that matter, from resellers similar to itself. The company is not competitively classified by this Commission and as a consequence it offers services under

a tariff, not a price list. By its own characterization, it serves customers who are “unwanted by the traditional telephone companies largely because of their poor credit histories.” *Motion for Conversion of Proceeding* at ¶ 4, page 1 (Aug. 10, 1999). For this reason, Reconex is obviously quite different from CLECs who battle with incumbents for the most lucrative telecommunications customers.

Staff’s search of the trade press turned up an article of approximately the same vintage as the article quoted by Reconex that presented a somewhat more optimistic picture, though admittedly not one of unbridled optimism, for companies like Reconex that offer prepaid local dialtone. The article characterizes the niche served by such companies as customers who “have been shunned by incumbents for nonpayment and are unwanted by most other competitive carriers.” Jason P. McKay, *Give Us Your Credit-Poor Masses – Prepaid local dialtone providers target the unwanted*, tele.com, Oct. 16, 2000. “Nabbing these new customer ramps up revenue quickly, but holding onto them isn’t easy. ‘It is difficult to be profitable in this business, but the potential revenue and the number of customers you can sign up are very significant,’ says Joe Brandes, senior vice president of marketing and operations at 1-800-Reconex, Inc. (Hubbard, Ore.), which provides prepaid local and long-distance service in 44 states and Washington, D.C.” *Id.* The article later points out “Once on board, prepaid subscriber fees can be lucrative. Synergistic [another prepaid company] grosses \$20 a month from most of its subscribers. The company leases the local loop from the incumbent for \$29.95 and resells it to the prepaid customer for \$49.95 a month.” *Id.* It is interesting to note that Reconex also charges its Washington customers \$49.95 a month, but it pays Qwest a wholesale rate of approximately fifteen percent less than Qwest’s retail tariff rate for

local exchange service and approximately ten percent less than Verizon's retail tariff for local exchange service. See UT-960369 Eighth Supplemental Order and Interim Order Establishing Cost for Determining Prices in Phase II (April 16, 1998).

Reconex reported gross intrastate operating revenues of \$760,745 in Washington state during the year 2000. 2000 annual report of 1-800-Reconex to the Commission. The Portland, Oregon *Business Journal* ranked Reconex among the Top 100 fastest-growing private companies in the greater Portland area in June 2000 based on 1997-1999 percentage of revenue growth and showed the companies total revenues at \$21,000,000 in 1999. *Top 100 fastest-growing private companies*, The Business Journal (Portland, OR), June 9, 2000, at p. 8. The company would not disclose its range of profitability for that feature, nor does Staff have access to such information, given that Reconex is privately held.

If the Commission is to entertain Reconex's request to pay its penalties in installments, the Commission should require that Reconex open its books to offer specific evidence of the alleged hardship.

2. The Commission should not lessen the "sting" of the penalties by allowing the company to pay them in installments.

Staff submits that it would go against the purpose of imposing penalties to allow the company to pay them in installments.

The company argues in its motion that to give it no credit for the expenditures that it did make prior to September 2000 on system improvements "seems unfair at best, punitive at worst." *Reconex's Motion for Summary Determination* at p. 5, l. 2. But this is precisely the point! The \$121,000 amount is a suspended *penalty*—it is a sum that Staff alleged to be owing *in penalties* for rule violations identified in Staff's September 1998

audit of Reconex's customer accounts. In settlement, Staff agreed to simply forego half of the total of \$372,000 in alleged penalties, to suspend \$45,000 on the basis of the outcome of the September 2000 audit, and to suspend \$121,000 and \$20,000 on condition that the company spend those same amounts on system and service improvements and customer education, respectively. As Staff argued in its Motion, Reconex did not demonstrate the good faith that was presumed in the Commission's approval of that settlement, and as a consequence, the company should receive the *punishment* that that it avoided the risk of having imposed upon it through litigation by agreeing to the settlement. The point of the penalties is not to put money in the coffers of the Commission (as in a consumer transaction where the seller allows the purchaser to pay in installments to ease the burden of a large purchase). It is to get the Company's attention and to deter it from future non-compliance. Allowing payment in installments is utterly at odds with those objectives.

The company should deny Reconex request to pay its penalties in installments instead of one lump sum.

DATED this 1<sup>st</sup> day of June, 2001.

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