

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET UT-060962
)	
Complainant,)	ORDER 04
)	
v.)	
)	
AT&T COMMUNICATIONS OF THE)	INITIAL ORDER APPROVING
PACIFIC NORTHWEST, INC.)	AND ADOPTING SETTLEMENT
)	AGREEMENT
Respondent.)	
.....)	

1 *Synopsis: This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. This Order would approve and adopt the parties’ Settlement Agreement in full resolution of the issues pending in this proceeding. AT&T admits to certain statutory violations, agrees to refund charges to customers that exceeded tariff rates, and agrees to a substantial penalty. AT&T commits to being more diligent in monitoring the activities of its billing agents to protect against future violations.*

MEMORANDUM

2 **PROCEEDINGS:** This docket involves a complaint initiated by the Washington Utilities and Transportation Commission (Commission) on behalf of its staff alleging that AT&T Communications of the Pacific Northwest, Inc. (AT&T), improperly charged customers receiving collect calls from prisons in Washington State more than the amount stated in tariff schedules on file with the Commission and in effect, in violation of RCW 80.36.130.

3 **PARTY REPRESENTATIVES:** Michael Fassio, Assistant Attorney General, represents the Commission's regulatory staff (Commission Staff or Staff) as Complainant. Gregory J. Kopta, attorney, Seattle, Washington, represents Respondent AT&T.

4 **SETTLEMENT:** The parties filed a Settlement Agreement on December 14, 2007. They simultaneously filed their Joint Settlement Narrative. They ask the Commission to approve their settlement in full resolution of the issues pending in this proceeding.

I. Background.

5 Staff initiated an investigation following a consumer complaint filed in August 2005, in which the consumer stated he had been improperly billed for pay phone collect calls from correctional facilities within the state of Washington. The consumer stated he did not receive a sufficient explanation from AT&T concerning his inquiry into disparate charges for similar calls he received from the Airway Heights Correctional Facility in Spokane, Washington.

6 Staff reviewed certain billing records provided by AT&T. When Staff found that all customers who accepted collect calls during portions of March, April, May, and June 2005 from the Airway Heights Correction Center in Spokane were charged improper rates by AT&T, Staff initiated a formal investigation.

7 Staff found that AT&T, through its billing agent Zero Plus Dialing, Inc. (ZPDI), improperly billed numerous customers for collect calls from the Airway Heights Correctional Facility and the Washington State Penitentiary. Staff found AT&T in violation of RCW 80.36.130, which requires a telecommunications company to charge the rates it has on file and in effect in its published schedule.

8 In its complaint, Staff asked the Commission to find that each call AT&T improperly billed through its agent, ZPDI, constitutes a violation of RCW 80.36.130. Staff further requested the Commission to impose monetary penalties on AT&T under RCW 80.04.380 and/or other sanctions, if the alleged violations were proved.

II. Settlement Terms.

- 9 The Settlement Agreement includes AT&T's acknowledgment that 29,971 collect calls that originated from the Airway Heights Correctional Facility and the Washington State Penitentiary between March 14, 2005, and June 1, 2005, were incorrectly billed by its agent, ZPDI, in violation of RCW 80.36.130.¹ According to the settlement terms, this resulted in total excess charges of \$67,295.²
- 10 The settlement requires AT&T to establish a claims process to provide refunds of up to the full \$67,295 to those customers who contact AT&T and submit a verifiable claim by August 31, 2008.³ AT&T will provide notice of the claims process to potential claimants through postings at the correctional facilities, newspaper advertisements and notices.⁴ Staff will refer customers who contact the Commission regarding the claims process to AT&T. If disputes arise that AT&T is unable to resolve, AT&T will refer those customers to the Commission.⁵ AT&T agrees to complete all refunds to eligible customers no later than 60 days following the end of the customer claim period. AT&T will donate any portion of \$67,295 that has not been refunded at the conclusion of the claims process to the Offender Welfare Betterment Fund.⁶ AT&T will submit a quarterly report to the Commission describing the progress of the refunds process⁷ and a final report summarizing the refund process, and any donation.⁸
- 11 The parties agree that AT&T will pay a penalty totaling \$302,705 for its violations of RCW 80.36.130. The amount will be paid to the Commission within 30 days after the effective date of the Agreement.⁹
- 12 AT&T expressly commits in the Agreement to comply with all applicable Commission rules and statutes.¹⁰ AT&T will continue to actively monitor the billing

¹ See Settlement Agreement, at ¶ 4.

² *Id.*, at ¶ 4.

³ *Id.*, at ¶ 6.

⁴ *Id.*, at ¶ 8-10.

⁵ *Id.*, at ¶ 14.

⁶ *Id.*, at ¶ 17.

⁷ *Id.*, at ¶ 15.

⁸ *Id.*, at ¶ 16.

⁹ *Id.*, at ¶ 5.

practices of companies with whom it has a contractual relationship to provide billing services to Washington State customers, and conduct audits where appropriate.¹¹ The Agreement does not preclude the Commission from pursuing penalties for violations of Commission rules and statutes unrelated to the subject matter of the Agreement.¹²

- 13 **DISCUSSION AND DETERMINATION:** Commission Staff alleged via its Investigation Report that AT&T violated RCW 80.36.130 by improper billing of customers on 37,943 occasions. AT&T admits it violated RCW 80.36.130 by over billing customers on 29,971 occasions, and agrees to refund fully the amounts charged in excess of approved rates. The refunds provide recompense to those harmed by the over billing and ensure that neither AT&T nor its billing agent will benefit from these violations of law.
- 14 AT&T acknowledges, by accepting a substantial penalty and by express admission in the Settlement Agreement, its responsibility for the violations of law that occurred through the actions of a vendor who provided billing services to AT&T. AT&T also commits to being diligent in the future in monitoring the billing practices of companies it uses to bill customers for services. Taken together with the refunds to which AT&T agrees, these elements of the Settlement Agreement represent a reasonable compromise of the parties' positions and an overall outcome that is in the public interest.
- 15 The Settlement Agreement, if approved, means the parties and the Commission can avoid the further expense, inconvenience, uncertainty, and delay of continuing litigation. This, too, is in the public interest.
- 16 The Commission finds the proposed Settlement Agreement to be reasonable and in the public interest. The Settlement Agreement, attached to and made part of this Order by this reference, should be approved and adopted in full resolution of the issues in this proceeding.

¹⁰ *Id.*, at ¶ 18.

¹¹ *Id.*, at ¶ 19.

¹² *Id.*, at ¶ 18.

FINDINGS OF FACT

- 17 The Commission now makes and enters the following summary of facts, incorporating by reference pertinent portions of the preceding discussion:
- 18 (1) The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to regulate the rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.
- 19 (2) AT&T is a “public service company” and a “telecommunications company” as those terms are defined in RCW 80.04.010 and used in Title 80 RCW.
- 20 (3) AT&T admits to violations of RCW 80.36.130 by over billing customers on 29,971 occasions, resulting in the collection of excess charges totaling \$67,295.

CONCLUSIONS OF LAW

- 21 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed discussion:
- 22 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 23 (2) AT&T should be required to refund fully all amounts it over billed Washington customers who received collect calls from prisons located in this state.
- 24 (3) AT&T should be required to pay penalties totaling \$302,705 for its repeated violation of RCW 80.36.130.

- 25 (4) AT&T should be required to follow all pertinent statutes and rules and to exercise diligence in monitoring the activities of its billing agents to ensure collection of no more than the charges authorized in its approved tariff.

ORDER

THE COMMISSION ORDERS:

- 26 (1) The Parties' Settlement Agreement, appended to this Order, is approved and adopted in full resolution of the issues in this proceeding. AT&T, as provided in the Settlement Agreement, is required to make refunds, pay penalties, exercise due diligence in monitoring the activities of its billing agents, and to satisfy all other terms of the Settlement Agreement.
- 27 (2) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington and effective December 27, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order, any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such an answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and (8) copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250