

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

NEW ACCESS COMMUNICATIONS LLC,

Respondent.
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) DOCKET NO. UT-010161
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) SETTLEMENT AGREEMENT
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COMMUNICATIONS

1 This Settlement Agreement is entered into by all parties to this proceeding for the purpose of resolving all issues raised in the above docket.

I. PARTIES

2 The parties to this Agreement are New Access Communications LLC and the Staff of the Washington Utilities and Transportation Commission (Staff) (collectively, "the Parties").

II. BACKGROUND

3 Staff began an investigation in response to complaints from consumers that New Access had changed their local and presubscribed long distance telephone service providers without authorization, a process commonly known as "slamming," in violation of WAC 480-120-139. The customers complained that New Access had misled them or misrepresented certain information to obtain their authorization.

4 During the investigation, Staff found New Access in violation of the following statutes and Commission rules:

- WAC 480-120-139(1), Verification of Orders (Slamming), which requires a company to obtain a customer's authorization to submit a change order for local exchange or intrastate toll service;

- WAC 480-120-139(2), Verification Process, which requires a company to obtain separate authorization and separate verification from the customer for each type of telecommunications service sold;
- WAC 480-120-101(5), Response to Informal Complaints, which requires a company to respond to a Commission complaint within two business days;
- WAC 480-120-139(3), Recordkeeping, which requires the company to provide to the Commission or the customer upon request documentation of the customer's authorization for a preferred carrier change;
- WAC 480-120-081(5)(g), Discontinuance of Service, which prohibits the company from disconnecting a customer's telephone service while a complaint is being investigated by the Commission so long as any amounts not in dispute are paid when due; and
- RCW 80.36.130, Rates and Charges, which requires the company to charge the rates published in its price list.

III. AGREEMENT

5 The Parties have reached agreement on the issues raised in the above docket and wish to present their agreement for the Commission's consideration and approval. The Parties therefore adopt the following Settlement Agreement, which the Parties enter into voluntarily to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding.

6 The Parties agree that New Access will pay the Commission investigation costs with penalties totaling \$72,806.00. This amount represents \$19,250.00 for 35 violations of WAC 480-120-139(1)¹; \$30,250.00 for 55 violations of WAC 480-120-139(2)²; \$5,390.00 for 98 violations of WAC 480-120-101(5); \$1,100.00 for 4 violations of WAC 480-120-139(3); \$3,300.00 for 6 violations of WAC 480-120-081(5)(g); \$687.00 for 5 violations of RCW 80.36.130(1); and a \$12,829.00 reimbursement to the Commission for its investigation costs. The amount shall be ordered due and payable in twelve monthly installments beginning the first day of the first month after the Commission issues its order approving this Settlement Agreement. Each installment shall be due and payable on the first of each month, with a five-day grace period. If the company fails to timely make any payment, the full remaining balance will be due and payable within 10 days. The first installment shall be \$17,828.00 (the \$12,829.00 reimbursement of the

¹ Staff found thirty-five violations of WAC 480-120-139(1). New Access, however, admits to violations in only nineteen of the thirty-five instances. While the company admits to the nineteen violations, the company asserts that the violations were due to negligence and negligent supervision of the third-party marketing companies, not willful intent.

² While the company admits to the fifty-five violations, the company asserts that the violations were due to negligence and negligent supervision of the third-party verification company, not willful intent.

investigation costs plus \$4,999.00 in penalties). The remaining eleven installments shall be \$4,998.00 each.

New Access agrees to an additional penalty of \$49,073.00, which will be suspended on the condition that the company meets certain compliance benchmarks. The suspension period shall be six months from the date of this agreement. The suspended penalty will be imposed only if New Access fails to meet the requirements and benchmarks described in Attachment 1.

- 8 The Parties agree that New Access will notify the Commission immediately in writing when it resumes telemarketing in the State of Washington.
- 9 The Parties agree that New Access shall refund all amounts charged to customers who Staff determines have a valid slamming complaint filed with the Commission to date. New Access must refund the charges within two billing cycles from the date of this agreement and provide proof of the refund to Staff within two weeks from the date of the refund.
- 10 The Parties agree that New Access shall also refund amounts charged to any future complainant who files a slamming complaint where Staff determines, through the informal complaint process, that the complainant's claim is valid. New Access must refund the charges within two billing cycles from the date Staff closes the complaint and provide proof of the refund to Staff within two weeks from the date of the refund.
- 11 The Parties agree that New Access shall refund amounts to all customers who paid rates and charges for services that were either: (1) not a recognized service in the company's Price List on file with the Commission at the time the rates and charges were billed; or, (2) were in excess of the rates and charges in the company's Price List on file with the Commission at the time the rates and charges were billed. New Access must refund the charges within two billing cycles from the date of this agreement and must provide proof of the refund to Staff within two weeks from the date of the refund.
- 12 The Parties agree that New Access must respond to all consumer contacts received by the company within twenty-four hours.
- 13 The Parties agree that New Access will accurately respond to all consumer inquiries regarding dial-around long distance carrier services (10-10-XXX numbers). New Access shall not represent that a consumer may use a particular dial-around service when the service will not be available.
- 14 The Parties agree that New Access will process daily loss and completion reports received from Qwest. New Access will use its best efforts to ensure that the accounts of customers who have left New Access service will accurately reflect the termination date, and New Access will use its best efforts not to bill for services beyond that termination date. If the services in question have a defined billing period, New Access will use its best efforts not to bill for services beyond the completion of the billing period in which the service termination occurs.

15 The Parties agree that New Access will comply with all applicable Commission rules and statutes, including those regarding changes in local exchange and intrastate toll services rules set forth in WAC 480-120-139; discontinuance of services rules set forth in WAC 480-120-81; complaints and disputes rules set forth in WAC 480-120-101(5); and, rates and charges laws set forth in RCW 80.36.130. This Agreement does not preclude the Commission from pursuing penalties for violations of Commission rules and statutes unrelated to the subject matter of this Agreement or for subsequent violations of the rules and statutes stated above.

IV. GENERAL PROVISIONS

16 The Parties agree that this Settlement Agreement is a settlement of all contested issues between them in this proceeding. The Parties understand that this Settlement Agreement is not binding unless and until accepted by the Commission.

17 The Parties agree to cooperate in submitting this Agreement promptly to the Commission for acceptance. The Parties agree to support adoption of this Agreement in proceedings before the Commission through testimony or briefing. No party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement.

18 Nothing in this Agreement shall limit or bar any other entity from pursuing legal remedies against New Access or New Access' ability to assert defenses to such claims.

19 The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission Order fully adopting those terms. This Agreement shall not be construed against either party because it was a drafter of this Agreement.

20 The Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Agreement in its entirety.

21 The Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. Copies sent by facsimile are as effective as original documents.


22 The Parties shall take all actions necessary as appropriate to carry out this Agreement.

23 In the event that the Commission rejects all or any portion of this Agreement, each party reserves the right to withdraw from this Agreement by written notice to the other party and the

Commission. Written notice must be served within 10 days of the Order rejecting part or all of this Agreement. In such event, neither party will be bound or prejudiced by the terms of this Agreement, and either party shall be entitled to seek reconsideration of the Order. Additionally, the Parties will jointly request a prehearing conference be reconvened for purposes of establishing a procedural schedule to complete the case.

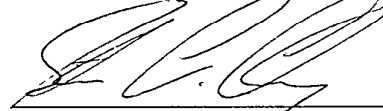
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION STAFF

CHRISTINE O. GREGOIRE
Attorney General



LISA WATSON
Assistant Attorney General
Counsel for Commission Staff
Dated: April 9, 2002.

NEW ACCESS COMMUNICATIONS LLC



STEVEN C. CLAY
Carrier Services President and
General Counsel
Dated: April 8, 2002.

ATTACHMENT 1

By this Settlement Agreement, New Access agrees to a suspended penalty of \$49,073.00 in addition to the \$72,806.00 in penalties and reimbursement costs to be paid as required. New Access must (1) notify the Commission in writing of the date it plans to resume telemarketing practices in Washington, (2) submit its third-party verification script for Washington to Staff, and (3) receive Staff approval of the verification script before New Access may resume telemarketing practices in Washington.

The suspended penalty will be imposed only if New Access fails to meet the requirements and benchmarks as required in this Attachment.

Slamming

- If (1) the Commission receives two or more complaints of slamming violations occurring after New Access resumes telemarketing in Washington during the six-month period, and (2) Staff determines, through the informal complaint process, that the slamming complaints are valid, the company must pay \$15,750.00.

Verification

- If any third-party verification tape requested by Staff for selected customers materially deviates from the verification script approved by Staff, New Access must pay \$24,750.00.

Response to informal complaints

- New Access must respond to informal complaints as required by WAC 480-120-101(5). New Access must pay \$4,410.00 if it violates WAC 480-120-101(5) two or more times during the suspension period.

Recordkeeping

- New Access must provide customers with a copy of the third-party verification tape within two weeks of the customer's request. If the Commission receives two or more customer complaints during the suspension period alleging that the company did not provide a copy of the verification tape as required, New Access must pay \$900.00.

Disconnection of service

- If New Access disconnects any customer's service while that customer's complaint is open at the Commission during the suspension period, New Access must pay \$2,700.00.

Rates and charges

- If New Access bills a customer for rates or charges not in the company's tariff or price list on file with the Commission during the suspension period, New Access must pay \$563.00.