

Service Date: October 4, 2019

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**NOTICE OF PENALTIES INCURRED AND DUE  
FOR VIOLATIONS OF LAWS AND RULES**

PENALTY ASSESSMENT: D-190681  
PENALTY AMOUNT: \$1,000  
Investigation # 8009

Duaine Birkhofer  
Frontier Communications Northwest, Inc.  
13923 Smokey Point Blvd.  
Marysville, WA 98270

UBI: 313 013 420  
Phone: (425) 999-0182

The Washington Utilities and Transportation Commission (Commission) believes that Frontier Communications Northwest, Inc., (Frontier or Company) has violated Revised Code of Washington (RCW) 19.122.030(3)(a) by failing to provide reasonably accurate information regarding the location of underground facilities to an excavator within the required two business days after receipt of notification of excavation. RCW 19.122.070(1) states, in part, that violations of any provision of the chapter are subject to a civil penalty of not more than \$1,000 for an initial violation and not more than \$5,000 for each subsequent violation within a three-year period.

The Commission reviewed findings and recommendations made by the Washington State Dig Law Safety Committee (Safety Committee) and hereby notifies you that it is assessing a penalty of \$1,000 against you on the following grounds:

On August 13, 2019, the Safety Committee heard the complaints for cases 19-061 and 19-062 against Frontier regarding alleged violations of the Washington state dig law, RCW 19.122, that occurred on December 27, 2018, and June 13, 2019. The complainant in this case was Austin's Lend-A-Hand Corp (Austin's Lend-A-Hand). The Safety Committee determined that Frontier committed the following violations:

- Two violations of RCW 19.122.030(3)(a) for failing to provide reasonably accurate information as to the location of underground facilities within two business days on the above dates.

The Safety Committee recommends that the Commission assess a \$6,000 penalty against Frontier, as follows:

- \$1,000 penalty for the first violation of RCW 19.122.030(3)(a) that occurred on December 27, 2018; and
- \$5,000 penalty for the second violation of RCW 19.122.030(3)(a) that occurred on June 13, 2019.

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and conclusions regarding the violations on December 27, 2018, and June 13, 2019,

and conducted an independent investigation that included obtaining additional information that was not available for the Committee's consideration at the time of the review. Staff found that Frontier violated RCW 19.122.030(3)(a) on June 13, 2019. Staff's investigation determined that there was insufficient evidence to support a finding that Frontier violated RCW 19.122.030(3)(a) on December 27, 2018. Staff based its decision on the following information provided by the Safety Committee and Staff's investigation:

#### **19-061**

On December 20, 2018, Austin's Lend-A-Hand submitted utility locate request #18536674 for 832 New Morning Rd., Camano Island, Washington. On December 27, 2018, Austin's Lend-A-Hand arrived at the jobsite and discovered a lack of utility markings on the ground within the identified excavation area. Austin's Lend-A-Hand contacted Frontier's contracted locator, who was dispatched to the site and subsequently located and marked other underground utilities within the excavation area. Frontier's contracted locator contended that, at the time of the locator's initial response within the required two business days, its locator indicated on the ground that Frontier's utilities were outside the excavation area after reviewing maps that showed the area was clear. There was insufficient evidence to determine whether or not these markings were present. Therefore, Staff cannot confirm that the alleged violation occurred.

#### **19-062**

On June 5, 2019, Austin's Lend-A-Hand submitted utility locate request #19235521 for 495 Tillicum Way, Camano Island, Washington. On June 13, 2019, Austin's Lend-A-Hand arrived at the jobsite and discovered a lack of Frontier underground utility markings on the ground near a utility pole within the identified excavation area, despite markings indicating that the area was clear. Austin's Lend-A-Hand contacted Frontier's contracted locator, who was dispatched to the site and subsequently located and marked additional underground utilities within the excavation area. Photographs and documentation submitted to the Safety Committee by both parties support the allegation, and Staff's subsequent investigation concluded that Frontier failed to provide reasonably accurate information to the excavator about the location of its underground utilities in the excavation area within the required two business days of the locate request. Additionally, the investigation found that at the time of the initial utility locate, Frontier's locator lacked sufficient information to determine whether or not the additional utilities near the utility pole within the excavation area belonged to Frontier or another telecommunications company, and therefore failed to provide reasonably accurate information when it identified the excavation site as clear of Frontier utilities.

Staff recommends the Commission accept the Safety Committee's recommendation for the violation of RCW 19.122.030(3)(a) that occurred on June 13, 2019, and assess a \$1,000 penalty against Frontier for failing to provide reasonably accurate

information within two business days about the location of its underground utilities, as follows:

- \$1,000 penalty for the violation of RCW 19.122.030(3)(a) that occurred on June 13, 2019.

The Commission agrees with Staff's recommendation and assesses a penalty of \$1,000.

These facts, if not contested or if proved at a hearing and not rebutted or explained, are sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe that the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violations or for mitigation of the penalty must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. *See* RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violations or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

**You must act within 15 days after receiving this notice** to do one of the following:

- Pay the \$1,000 amount due;
- Request a hearing to contest the violation(s); or
- Request mitigation to reduce the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

**If you do not act within 15 days**, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Lacey, Washington, and effective October 4, 2019.

*/s/ Rayne Pearson*  
RAYNE PEARSON  
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT D-190681, Investigation # 8009

RECEIVED  
RECORDS MANAGEMENT  
OCT 22 2019  
STATE OF WASHINGTON  
UTIL. & TRANSP. COMMISSION

**PLEASE NOTE:** You must complete and sign this document, and send it to the Commission within 30 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violations occurred and enclose \$1,000 in payment of the penalty. *PAYMENT WILL BE PROCEED AND PAYMENT MADE ACCORDING TO FTR PROCESS.*

2. **Contest the violation.** I believe that the alleged violation(s) did not occur for the reasons I describe below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR  b) I ask for a Commission decision based solely on the information I provide above.

3. **Request mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reasons set out below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR  b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: 10/18/19 [Month/Day/Year], at LYNNWOOD, WA [City, State]

Tom Navotny  
Name of Respondent (Company) – please print

[Signature]  
Signature of Applicant

RCW 9A.72.020:  
“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime,

and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony."