

JAN 24 1995

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET NO. UT-911482
)	
Complainant,)	
)	NINTH SUPPLEMENTAL ORDER
v.)	
)	
INTERNATIONAL PACIFIC, INC.,)	COMMISSION ORDER ACCEPTING
)	AND APPROVING SETTLEMENT
Respondent.)	AGREEMENT
.....)	

This proceeding involves a complaint brought by the Commission on January 13, 1992, against International Pacific, Inc., a provider of alternate operator services¹ to the public. It alleges overearnings and failure to follow required accounting procedures.

The Commission Staff was represented by Sally Johnston and Steven Smith, assistant attorneys general. Respondent International Pacific, Inc., was represented by Douglas N. Owens, attorney, Seattle. Intervenor Northwest PayPhone Association (NPPA) was represented by Brooks Harlow, attorney, Seattle.

The matter was heard by an administrative law judge of the office of administrative hearings, whose initial order, entered September 28, 1994, would sustain the Commission Staff case. The initial order would order the assessment of substantial penalties and would order respondent's rates reduced by 42.7 per cent. IPI asked for administrative review of the initial order.

The settlement that is offered is global -- it deals with a number of issues involving IPI. In addition to requiring IPI to reimburse the Commission for costs of the investigation and requiring IPI to reduce rates to a level equivalent to that recommended in the initial order, it would require IPI to take actions in other proceedings. IPI and Commission Staff contend that the public would benefit substantially from the settlement, which would allow an immediate reduction in rates and improvement in regulatory compliance.

¹An AOS company provides "alternate operator services," an alternate for the consumer's own presubscribed service. At a location such as a pay phone, a consumer has no direct connection to his own presubscribed toll carrier. An operator-assisted call from such a public phone is connected to an AOS company that is chosen by the person providing the telephone, unless the consumer redirects the call.

The proposal includes the following provisions. On entry of a Commission order approving the stipulation and settlement, the following will occur:

1. IPI will within 10 days file tariff revisions reducing its rates so that no rate exceeds the comparable published AT&T daytime rate plus 25c. That rate level is the equivalent of a 40% reduction from IPI's highest rate, which is applied to most of its traffic. IPI will then track the AT&T reference rates -- it will within 30 days of any change in referenced AT&T rates file a conforming change in its tariffs, which the Commission shall permit to become effective if the change does no more than track the AT&T rate.
2. IPI will pay the WUTC \$200,000 within 30 days after the order to reimburse costs of investigation and waives objections it might have to an assessment.
3. IPI will within 30 days after approval of the settlement file voluntary dismissals, with prejudice, of all pending petitions for judicial review: one in Spokane County challenging the Commission's denial of competitive classification and one in the Court of Appeals, challenging the Commission's rule requiring AOS companies to use the Uniform System of Accounts. In addition, it will not appeal an adverse Thurston County decision finding lawful a Commission rule requiring AOS companies to take reasonable efforts to assure that their aggregators meet specified standards.
4. Within 10 days after approval of the settlement IPI will petition for an amendment to WAC 480-120-141 to provide that the Commission will accept, as meeting the Public Convenience and Advantage test, rates that do not exceed AT&T daytime rates plus 25c. The Commission will begin a rulemaking to consider IPI's proposal and will exercise reasonable diligence to complete the rulemaking within 180 days from the date the petition is filed.
5. Within 30 days after approval of the settlement, IPI will apply for approval of transactions with affiliates that were discussed on the record in this complaint proceeding and that have not been approved.
6. Within 10 days after approval of the settlement, IPI will file an affidavit indicating that it complied with WAC 480-120-031 (Uniform System of Accounts) between March and September 1994, and supply records demonstrating compliance.

- 7. Within 10 days after the later of IPI's new tariff becoming effective and IPI's payment of investigation cost reimbursement, the Commission will dismiss this complaint with prejudice. This will release IPI from responsibility for prior actions up to the date of the order of dismissal.
- 8. All of these obligations are contingent on the Commission's adoption of the proposed amendment to WAC 480-120-141 without material change within 180 days after the petition for rulemaking is filed. If the rule does not become effective by then, without material change, the parties will be allowed to unring the settlement bell -- as far as possible, to restore the prior status in all regards: the Commission will refund the investigation reimbursement, IPI will ask to have its appeals reinstated, the dismissal of this complaint will be reversed and it will proceed to Commission order, etc. This provision does not require the Commission to adopt such a rule; doing so would improperly decide a matter without hearing public comment or completing the statutory process.

Commission Staff represented that Public Counsel had been consulted about the proposed settlement and neither opposes it nor supports it.

The Commission accepts the settlement. It allows the Commission as well as the respondent to conclude a long and expensive course of litigation, it resolves all of the issues that have been the subjects of litigation, and it offers the promise of future compliance. It calls for reimbursement of costs in a substantial amount and it will result in a decrease in rates equivalent to what was proposed in the initial order.

It is not without drawbacks; settlements, by definition, balance interests and allow each of the parties to satisfy the interests that are most important. It would foreclose collection of potential substantial penalties upon accounting practices and foreclose imposition of penalties for violations of law and rule relating to tariffs. These drawbacks are offset by reimbursement of the Commission's costs of the investigation, in an amount perhaps equivalent to the penalties proposed, after mitigation. Most importantly, it would bring the company into compliance immediately. As we have repeatedly said, compliance is the primary function of penalty assessments and the aim in our enforcement efforts.

Finally, the proposal does not foreclose the Commission's lawful regulatory actions. The Commission is free to complain again against the respondent, albeit not for activities prior to the date specified in the settlement. The Commission will propose the rulemaking as described by the respondent; in determining whether to adopt the proposal or any substitute, the Commission will exercise its own judgment.

The settlement adopted in this order shall not constitute precedent for any purpose except the principles that the Commission encourages parties to disputes before it to consider settlements and that the Commission may accept settlements that it determines are consistent with the public interest.

For all the reasons specified above, the Commission determines that the proposed settlement agreement resolves the complaint in an appropriate manner and that it is consistent with the public interest. The Commission accepts it. The agreement itself is attached to this Order as Appendix A.

FINDINGS OF FACT

Having discussed the relevant oral and written evidence above, and having stated its findings and conclusions, the Commission now makes the following summary of the facts as found. Those portions of the preceding detailed findings pertaining to the ultimate facts are incorporated by reference in the ultimate facts found below.

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington empowered by statute to regulate rates, rules, regulations, practices, accounts, securities and transfers of public service companies operating within the state of Washington, including telecommunications companies.
2. Respondent is engaged in the business of furnishing telecommunications service for hire within the state of Washington, specifically alternate operator services. Respondent is a public service company subject to regulation by the Washington Utilities and Transportation Commission.
3. In January 1992, the Commission filed a complaint against the Respondent. The complaint contends that the company's rates and charges exceed a fair, just, reasonable and sufficient level. The complaint also contends that the company failed to keep its books consistent with the Uniform System of accounts.

4. The parties submitted to the Commission for approval a Stipulation and Proposed Settlement Agreement. The agreement is attached to this order as Appendix A and is incorporated herein by this reference. Among other things, the settlement provides that the company will file tariff reductions, to the AT&T daytime rate, plus 25 cents per call. The parties accept that the resulting rates are fair, just, reasonable and sufficient in the absence of filing a tariff increase request that the Commission may examine, suspend, and hear pursuant to processes applicable to all such requests. The settlement agreements is consistent with the public interest and is acceptable to the Commission.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and the parties thereto.

2. The terms of the Stipulations and Proposed Settlement Agreement are consistent with the public interest. The settlement agreement should be adopted.

Based on the above Findings of Fact and Conclusions of Law, the Commission enters the following order.

ORDER

THE COMMISSION ORDERS:

1. The Commission approves and adopts the Settlement Agreement attached to this Order as Appendix A.
2. The Commission retains jurisdiction to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective this 23rd day of January 1995.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sharon L. Nelson

SHARON L. NELSON, Chairman

Richard Hemstad

RICHARD HEMSTAD, Commissioner

Wm. R. Gillis

WILLIAM R. GILLIS, Commissioner

APPENDIX A

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	DOCKET NO. UT-911482
)	
vs.)	STIPULATION FOR
)	SETTLEMENT
INTERNATIONAL PACIFIC, INC.,)	
)	
Respondent.)	
_____)	

COME NOW the parties to the above litigation, by counsel,
and stipulate and agree as follows:

1. Whereas, there is now pending a formal complaint by the
WUTC against IPI in the above docket, and there are also
pending certain proceedings for judicial review of prior
determinations by the WUTC, which have been brought by IPI,
and there are also pending certain complaint cases brought
by the WUTC against other "grandfathered" AOS providers, and
the parties desiring to come to a settlement that is in the
public interest, and whereas IPI was acquired by LDDS

effective September 1, 1994, and accounting for IPI after that date is being handled by LDDS, and whereas the parties believe that establishing a new rate ceiling for AOS providers at AT&T daytime rates plus twenty-five cents (\$.25) would produce rates that are for the public convenience and advantage, they hereby agree that upon the WUTC's entry of an order approving this stipulation and settlement, the following actions shall be taken by the party identified:

a. IPI shall, within ten (10) days of such an order, file tariff revisions that reduce IPI's rates so that no rate exceeds the published AT&T daytime rate, plus twenty-five cents, (\$.25), for a call of the same type, distance and duration within the state of Washington. For the purpose of this paragraph, the same type call shall be interpreted to mean either automated or operator handled, customer dialed or operator dialed, collect, calling card or bill to third number. It is contemplated that filings of a similar nature will be made by the other "grandfathered" AOS providers which are currently respondents in formal

complaint proceedings, pursuant to similar settlements that have been reached in those proceedings. Such filings are not a condition of this agreement, however. IPI waives any procedural or legal objection to the effectiveness of such tariff reductions, as part of this settlement. IPI shall, within thirty (30) days of the effectiveness of any change in the AT&T daytime rate which is used as the reference for this settlement, file a conforming change in its tariffs on no more than statutory notice. The change shall be permitted to become effective without suspension, so long as it does no more than reflect the change in the AT&T price list or tariff.

b. IPI shall, within thirty (30) days of such an order, pay to the WUTC the sum of two hundred thousand dollars (\$200,000)US, as reimbursement of the cost of the WUTC's investigation pursuant to RCW 80.20.020. IPI waives any objection it would otherwise have under the statute that the amount of the regulatory fee exceeds one percent of its gross intrastate operating revenues for the last preceding calendar year.

c. IPI shall, within thirty (30) days of such an order, file voluntary dismissals with prejudice of all pending proceedings for judicial review, including *International Pacific v. Washington Utilities and Transportation Commission*, Spokane County Superior Court Docket No. 93-2-04959-0, and *International Pacific v. Washington Utilities and Transportation Commission*, Court of Appeals No. 16897-9-II, which it has brought against the WUTC. IPI will also not file a notice of appeal of the judgment of the Thurston County Superior court in *International Pacific, Inc. v. Washington Utilities and Transportation Commission*, No. 93-2-00931.

d. IPI shall, within ten (10) days of such an order, file a petition to amend WAC 480-120-141 to provide that AOS rates that do not exceed the published AT&T daytime rate plus twenty-five cents (\$.25) for calls of the same duration, distance and type, will be considered to meet the standard of public convenience and advantage. The Commission will, on receipt of IPI's petition, commence a rulemaking to consider the proposed amendment. The

Commission will exercise reasonable diligence to complete consideration of the proposed amendment within one hundred eighty (180) days from the date of filing of the petition.

e. IPI shall, within thirty (30) days of such an order, file an application for WUTC approval of transactions between IPI and affiliates that appeared in the record of this docket, but which had not been previously approved.

f. IPI shall, within ten (10) days of such an order, file an affidavit indicating that IPI was in compliance with WAC 480-120-031, between March, 1994 and September, 1994, except for accounts for which there are no counterparts within the FCC's Part 32, and supply the WUTC accounting records demonstrating such compliance.

g. The WUTC shall, within ten (10) days of the occurrence of the later of the effectiveness of IPI's revised tariff filing pursuant to paragraph (a) above and the payment by IPI of the reimbursement described in paragraph (b) above, dismiss the Complaint with prejudice, and except with regard to IPI's obligations under the prior settlement in *Washington Utilities and Transportation*

Commission v. International Pacific, Inc., Docket No. UT-921340, this shall release IPI for all causes of action including alleged penalties for past acts that were or could have been alleged in the Complaint, up to to the date of the order.

2. All of the mutual obligations described in section (1) above are contingent on the amendment to WAC 480-120-141 described in paragraph (1.d) above, becoming effective without material change. Should such amendment not occur within a period of one hundred eighty (180) days after the filing by IPI of the petition described in paragraph (1.d) above, all of the actions taken above shall be nullified, and the parties shall be restored to the status quo preceding the signing of this stipulation. Specifically, (1) IPI's tariff filing to reduce its rates shall be withdrawn, and its previously effective rates shall be permitted to become effective again on less than statutory notice; (2) IPI's payment of reimbursement shall be refunded without interest; (3) the dismissal of the Complaint in this docket shall be rescinded and IPI shall not have any release

for past acts; (4) IPI shall move to reinstate its pending appeals.

3. This stipulation has been negotiated as a whole. If it is not approved in its entirety by the WUTC, then the stipulation is void and the parties will continue to litigate. Although the WUTC has been represented in these proceedings by counsel, and has had evidence introduced through a trial staff, the agency occupies the positions of both complainant and tribunal. Approval of the stipulation by the WUTC in its dual capacity as complainant and tribunal, will bind the WUTC to execute the

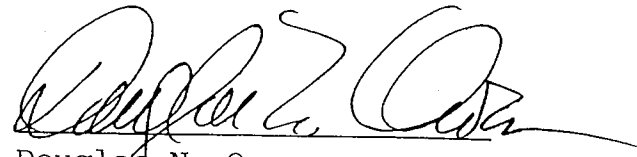
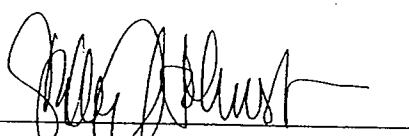
//
//
//
//
//
//
//
//
//
//

portions of the settlement that require its official action.

Respectfully submitted,

CHRISTINE GREGOIRE

INTERNATIONAL PACIFIC, INC.



Sally S. Johnston
Assistant Attorney General
WSBA 17094
Counsel for Washington
Utilities and Transportation
Commission

Douglas N. Owens
Its Attorney
WSBA 641

Stipulation dated December 16, 1994

FILED
1994
Com
Wash
State

MCL