



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • www.utc.wa.gov

September 10, 2013

Steven V. King, Executive Director and Secretary
Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. Frontier Communications Northwest, Inc.*

Commission Staff's Response to Application for Mitigation of Penalties
Docket UT-121925

Dear Mr. King:

On Aug. 19, 2013, the Utilities and Transportation Commission issued a \$41,400 Penalty Assessment in Docket UT-121925 against Frontier Communications Northwest, Inc. (Frontier) for 414 violations of Revised Code of Washington 80.36.130(1), which requires that no telecommunications company charge, demand, collect or receive different compensation for any service rendered or to be rendered than the charge applicable to such service as specified in its schedule on file and in effect at that time.¹

On Aug. 30, 2013, Frontier submitted a written application requesting mitigation of the penalty (Mitigation Request).² In its Mitigation Request, Frontier does not dispute that the violations occurred. The company states, "Frontier acknowledges that from July 1, 2010, through June 30, 2012, some customers were unintentionally charged incorrect NSF fees." The company also acknowledges that despite being notified of the error in June 2012, "no subsequent internal investigation took place because this particular complaint was the first of its nature and there were no indications of an ongoing problem."

¹ See Attachment A for a copy of the penalty assessment issued in this docket.

² See Attachment B for a copy of the company's Mitigation Request.

Frontier raises the following points to support its request for mitigation: Since the billing system conversion in 2012, all NSF fees have been assessed correctly; the company issued bill credits of \$6,750 in November 2012 for the improper charges cited in the investigation report; and the company cooperated fully with staff's investigation and was responsive to all follow-up requests for information.

The commission had the authority to issue a formal complaint and assess penalties of up to \$1,000 for each violation. Staff already considered all of the factors the company presented in its Mitigation Request, and determined that those factors weighed in favor of recommending lesser penalties of \$100 per violation. Additional factors, however, weigh against any further mitigation. First, the violations caused serious harm to consumers by imposing an excessive fee on customers whose payments were already returned for insufficient funds. Second, staff's investigation revealed that the company charged a total of 1,180 improper NSF fees between July 2010 and March 2012. But for staff's data request prompting an internal investigation, it is unlikely that the company would have discovered the error, self-reported it, and credited affected customers. Finally, despite the commission's directive in Docket UT-090073 to implement a compliance program to avoid charging improper rates, the violations at issue still occurred.

Because the company has not presented any new or compelling information, staff does not support further mitigation.

If you have any questions regarding this recommendation, please contact Rayne Pearson, Consumer Protection Manager, at (360) 664-1103, or rpearson@utc.wa.gov.

Sincerely,

Sharon Wallace, Assistant Director
Consumer Protection and Communications

ATTACHMENT A
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: UT-121925

PENALTY AMOUNT: \$41,400

Frontier Communications Northwest Inc.
1800 41st Street
Everett, WA 98201

The Washington Utilities and Transportation Commission (Commission) believes that you have committed violations of Revised Code of Washington (RCW) 80.36.130(1), which requires that no telecommunications company charge, demand, collect or receive different compensation for any service rendered or to be rendered than the charge applicable to such service as specified in its schedule on file and in effect at that time.

RCW 81.04.405 authorizes the Commission to assess penalties of \$100 for every such violation. Each and every such violation shall be a separate and distinct offense and, in the case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation.

Commission staff investigated an improper Non-sufficient funds (NSF) fee that was assessed between August 2010 and March 2012. During that investigation, Commission staff identified 414 violations of RCW 80.36.130(1) that occurred within the two year period prior to the date of this notice. As a result, the Commission hereby notifies you that it has assessed penalties against you in the amount \$41,400 for the following 414 violations:

- RCW 80.36.130(1) for charging 414 customers an improper NSF fee.
414 VIOLATIONS: RCW 80.36.130(1)

This information, if proved at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe the violation did not occur, you may request a hearing to contest the penalty assessment. If there is a reason for the violation that you think should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty. See RCW 81.04.405.

You have the right to present your request for review or further mitigation at a hearing, but you are not required to do so. If you do, the Commission will review the evidence supporting your request in an informal hearing, called a Brief Adjudicative Proceeding, before an administrative

law judge. The administrative law judge will consider your plea and 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 amount due.
- Request a hearing to contest the occurrence of the violations.
- Request mitigation to contest 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 will then sue you to collect the penalty.

DATED at Olympia, Washington, and effective August 19, 2013.

GREGORY J. KOPTA
Administrative Law Judge

ATTACHMENT B

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT UT-121925**

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 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.

2013 AUG 30 AM 9:50

1. **Payment of penalty.** I admit that the violations occurred. I have:

Enclosed \$41,400 in payment of the penalty

Submitted my payment of \$41,400 online at www.utc.wa.gov. My confirmation number is _____.

2. **Request for a hearing.** I believe that one or more of the alleged violations did not occur, based on the following information, and request a hearing, which is a process that allows an affected person to present argument to an administrative law judge for a decision by an administrative law judge:

3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reason(s) set out below.

a) I ask for a hearing for a decision by an administrative law judge based on the information presented above.

OR b) I waive a hearing and ask for an administrative decision on the information I present directly 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: August 27, 2013 [month/day/year], at Everett, WA [city, state]

Carl Giger (Frontier Communications NW Inc.)
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.”



Frontier Communications Northwest Inc.

1800 – 41st Street WA0105RA

PO Box 1003

Everett, WA 98201-1003

Fax: 425-261-5262

Via E-mail and Post Paid Mail

August 27, 2013

Mr. Steven V. King
Secretary and Executive Director
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P. O. Box 47250
Olympia, WA 98504-7250

Re: Frontier Response to Staff Investigation in Docket No. UT- 121925

Dear Mr. King:

Enclosed please find Frontier Communications Northwest Inc.'s Response to Commission Staff's investigation into Frontier's business practices regarding non-sufficient fund charges.

An electronic version is being provided by e-mail.

Sincerely,

A handwritten signature in black ink, appearing to read "CG", written over a horizontal line.

Carl Gipson
Manager, Government & External Affairs
Frontier Communications Northwest Inc.
1800 41st Street
Everett, Washington 98201
Tel: 425-261-6380
Carl.Gipson@FTR.com

Enclosures

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

FRONTIER
COMMUNICATIONS NORTHWEST
INC.

Respondent.

Docket No. UT-121925

COMPANY RESPONSE

Frontier Communications Northwest Inc. ("Frontier") provides the following answer ("Answer") to the Commission's Complaint ("Complaint") in the above-referenced docket.

ANSWER

1. Staff of the Washington Utilities and Transportation Commission ("Staff") issued Frontier a data request pertaining to Non-Sufficient Fund (NSF) charges on September 6, 2012. The data request required the company submit all records regarding NSF charges from July 1, 2010 through June 30, 2012 for its Washington customers. Staff granted Frontier an extension to the September 20, 2012 deadline. The company responded to Staff's data request on October 4, 2012. Frontier responded to subsequent follow-up data requests sent on October 18, 26 and November 9 as well as requests for clarifying information on December 19 and 21, 2012. On August 19, 2013 the Commission issued a Penalty Assessment of \$41,400 for violations of RCW 80.36.130(1), for charging 414 customers an improper NSF fee.
2. Frontier must respond to the Penalty Assessment by September 3, 2013 with one of three responses:
 - a. Payment of penalty
 - b. Request for a hearing
 - c. Application for mitigation

- i. [Frontier may] ask for a hearing for a decision by an administrative law judge based on the information presented above.
 - ii. [Frontier may] waive a hearing and ask for an administrative decision on the information [the company] present[s] directly above.
3. Frontier responds that it asks for mitigation and waives a hearing and asks for an administrative decision on the information presented in this Answer.
4. Frontier acknowledges that from July 1, 2010 through June 30, 2012, some customers were unintentionally charged incorrect NSF fees. Frontier issued a bill credit for the initial commission-referred complaint in June 2012 but no subsequent internal investigation took place because this particular complaint was the first of its nature and there were no indications of an ongoing problem. Once the Commission issued its data request of September 6, 2012 an internal investigation turned up data showing 1,030 customers were charged incorrect NSF fees. Customers that could be located were credited back the difference between the tariffed NSF charge of \$15 and the incorrect charges (a vast majority of the incorrect charges were \$20) in November 2012 – other customers who had disconnected from Frontier services were sent refunds in December 2012.
5. All of the incorrect NSF charges took place before a major operations support system conversion, which Frontier completed in March 2012. Since that time, NSF charges have been correctly and systematically applied. The previous system required manual application of the charge based on systems and processes in-place when Frontier acquired this property. Frontier's system now used in Washington has greater controls, is largely automated, and results in greater NSF charge billing accuracy.
6. Frontier has expended considerable resources to convert its acquired operations to its operations support system – one that has enhanced Frontier's ability to respond to customer, regulatory agency and taxing authority changes in a more timely and accurate manner. Frontier highly values accurate billing. Frontier's investment in the system conversion completed in March 2012 reflects a commitment to employing enhanced controls to assure accurate billing. Frontier respectfully asks the Commission to mitigate the \$41,400 fine due to the fact that the company took immediate action upon further investigation beginning in September 2012, issued bill credits of \$6,750 in November 2012, fully cooperated with Staff's investigation and comprehensively

answered all data requests and clarification questions, and no further incorrect NSF charges have taken place since the March 2012 date that system conversion was finalized. The company believes the Assessment is excessive given the fact that the incorrect charges ranged between \$5 and \$10, yet yielded a \$100 fine per violation. Frontier asks the Commission to exercise the discretion allowed in RCW 81.04.405 to mitigate the recommended penalty based on the factors recited herein.

DATED this 21st of August, 2013.

Frontier Communications Northwest Inc.



George Baker Thomson, Jr.
1800 41st Street
Everett, WA 98201
425-261-5844