

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment)	DOCKET UT-121925
Against)	
)	ORDER 01
FRONTIER COMMUNICATIONS)	
NORTHWEST, INC.)	ORDER DENYING REQUEST
)	FOR MITIGATION
in the amount of \$41,400)	
)	
.....		

BACKGROUND

- 1 Under Washington law, no telecommunications company may charge, demand, collect, or receive different compensation for any service it provides than the charge applicable to such service as set forth in a schedule on file with the Washington Utilities and Transportation Commission (Commission). RCW 80.36.130(1). Commission Staff (Staff) conducted an investigation in response to a customer complaint and determined that on 414 occasions between August 2010, and March 2012, Frontier Communications Northwest, Inc. (Frontier or Company) charged its customers a non-sufficient funds fee (NSF) that was higher than the rate in the Company’s tariff in violation of that statute.

- 2 RCW 81.04.405 authorizes the Commission to assess penalties of \$100 for each violation of a statute or Commission rule or order. On August 19, 2013, the Commission assessed a penalty of \$41,400 against the Company, calculated as \$100 times 414 violations.

- 3 On August 27, 2013, Frontier filed a response to the penalty assessment. The Company admitted the violations, waived a hearing, and asked the Commission for mitigation of the penalty. Frontier states that although it received notice that some customers were “unintentionally charged incorrect NSF fees” between July 1, 2010, through June 30, 2012, the Company did not investigate the practice until September 2012 (when Frontier received a data request from the Commission) because “this particular complaint was the first of its nature and there were no indications of an

ongoing problem.”¹ The Company admits it then discovered that it had charged 1,030 customers improper NSF fees. In support of its request for mitigation, the Company asks the Commission to consider that it issued bill credits of \$6,750 in November 2012, cooperated with Staff’s investigation, and underwent a “major operations support system conversion,” completed in March 2012, which “results in greater NSF charge accuracy.”²

4 On September 10, 2013, Staff filed a reply opposing mitigation. Staff states that improper NSF fees present a particular hardship for consumers whose payments have already been returned for insufficient funds. Staff observes that the Commission could have issued a formal complaint and imposed penalties of up to \$1,000 per violation but instead chose only to assess penalties of \$100 per violation. Moreover, Staff’s investigation revealed that Frontier had charged 1,180 improper NSF fees, only 414 of which were subject to penalties, showing a much longer history of violations. Such history is at odds with the Commission’s order in Docket UT-090073 directing the Company to implement a compliance program assuring that it would not continue to improperly bill customers for costs they were not obligated to pay.

DISCUSSION

5 The Commission considers several factors when determining the level of penalty to be imposed for violations of statutes, rules, orders, or tariffs, including:

- (1) How serious or harmful the violation is to the public;
- (2) Whether the violation is intentional;
- (3) Whether the company self-reported the violation;
- (4) Whether the company was cooperative and responsive;
- (5) Whether the company promptly corrected the violations and remedied the impacts;
- (6) The number of violations;
- (7) The number of customers affected;

¹ Frontier Response at 2, ¶ 4.

² *Id.* ¶ 5.

- (8) The likelihood of recurrence;
- (9) The company's past performance regarding compliance, violations, and penalties;
- (10) The company's existing compliance program; and
- (11) The size of the company.³

6 Based on the application of these factors, the Commission denies Frontier's request for mitigation of the penalties assessed in this case. Frontier charged fees that exceeded the levels listed in its tariff, which are statutory violations the Commission considers to be among the most serious and harmful to the public. Frontier admits that it had prior notice of the improper NSF charges but did not investigate or take any corrective action until after the Commission notified the Company that Staff was conducting its own inquiry. Such conduct was grossly negligent, if not intentional, resulting in hundreds of customers being charged excessive fees. These circumstances are reminiscent of the 472 overcharges at issue in Docket UT-090073 for which the Company's predecessor agreed to pay \$39,600 in penalties and to implement a compliance program. This history, along with the nature and number of violations, amply support the full penalty amount.

7 Frontier nevertheless contends that the penalties should be mitigated in light of the Company's cooperation with Staff, voluntary reimbursement of overcharged amounts to affected customers, and changes to accounting procedures to ensure such erroneous billings do not recur. These are among the factors the Commission considers in determining an appropriate penalty, but in this case, we find that they do not justify any reduction in the assessed penalty. The Company should have taken these steps long before now, when it first became aware of the overcharges. With Frontier's history of billing customers in excess of tariff rates, we conclude that the \$41,400 penalty is appropriate both to punish the Company for the violations and to provide the second largest incumbent local exchange company in Washington with a sufficient additional monetary incentive to comply with its legal obligations to its customers.

³ Docket A-120061, Enforcement Policy of the Washington Utilities and Transportation Commission, ¶ 15 (1) (January 7, 2013).

ORDER

THE COMMISSION ORDERS:

- 8 (1) The request of Frontier Communications Northwest, Inc., for mitigation of the
\$41,400 penalty is DENIED.
- 9 (2) The penalty is due and payable no later than December 31, 2013.
- 10 The Secretary has been delegated authority to enter this order on behalf of the
Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective December 18, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website. The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's website.