

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of:)	
)	DOCKET UT-071571
ELLENSBURG TELEPHONE)	
COMPANY, D/B/A FAIRPOINT)	ORDER 01
COMMUNICATIONS)	
)	GRANTING IN PART PETITION
For Minimal Regulation of)	FOR MINIMAL REGULATION OF
Bundled Telecommunications Services)	BUNDLED
)	TELECOMMUNICATIONS
)	SERVICES
.....)	

BACKGROUND

1 On July 23, 2007, Ellensburg Telephone Company, d/b/a FairPoint Communications (the Company), filed with the Washington Utilities and Transportation Commission (the Commission) a petition requesting that its current and future packaged and bundled telecommunications services be subject to minimal regulation pursuant to legislation enacted during the 2007 legislative session (the 2007 legislation).¹ The 2007 legislation allows bundles of telecommunications services to be minimally regulated under certain conditions.

¹ See Chapter 26, Laws 2007, Section (2). The session laws of 2007 have not yet been included in the Revised Code of Washington. Section 2 provides:

- (1) A noncompetitive telecommunications company may petition to have packages or bundles of telecommunications services it offers be subject to minimal regulation. The commission shall grant the petition where:
 - (a) Each noncompetitive service in the package or bundle is readily and separately available to customers at fair, just, and reasonable prices;
 - (b) The price of the package or bundle is equal to or greater than the cost for tariffed services plus the cost of any competitive services as determined in accordance with RCW 80.36.330(3); and
 - (c) The availability and price of the stand-alone noncompetitive services are displayed in the company’s tariff and on its website consistent with commission rules.
- (2) For purposes of this section, “minimal regulation” shall have the same meaning as under RCW 80.36.330.
- (3) The commission may waive any regulatory requirement under this title with respect to packages or bundles of telecommunications services if it finds those requirements are no longer necessary to protect public interest.

- 2 In the petition, the Company states that as a telecommunications company registered with the Commission but not classified as a competitive telecommunications company, it is eligible under the 2007 legislation to seek minimal regulation of its packaged and bundled telecommunications services.²
- 3 The Company states that the 2007 legislation draws a distinction between packages and bundles on the one hand and the noncompetitive, regulated service components of such packages and bundles when offered on a stand-alone basis on the other. The package or bundle is a service offering in its own right and will be offered pursuant to non-tariffed rates, terms and conditions, with consumers having the option to instead buy the noncompetitive, regulated service components on a stand-alone basis pursuant to tariff and full regulation under the Commission's rules.
- 4 Minimal regulation of packaged and bundled offerings under the 2007 legislation has the same meaning as under the competitive classification statute, specifically RCW 80.36.330(2), which provides that companies must at a minimum: (a) keep their accounts according to Commission rules; (b) file financial reports as required by the Commission; and (c) cooperate with Commission investigations of customer complaints. This subsection previously provided that minimal regulation included the use of price lists rather than tariffs, but 2006 legislation required the withdrawal of price lists and precludes the filing of new price lists. The result is that packages and bundles of intrastate telecommunications services subject to minimal regulation are not subject to tariffing.
- 5 The categories of packages and bundles that the Company proposes be subject to minimal regulation include the following types of combinations: (1) two or more tariffed services; (2) two or more services, with a minimum of one tariffed service and one competitive service; (3) three or more services, with a minimum of one tariffed service, one competitive service and one non-regulated service; and (4) two or more services, with a minimum of one tariffed service and one non-regulated service. The petition also identifies current bundled offerings that would become subject to minimal regulation if the petition is approved.

² The terms "packages" and "bundles" are used variously by carriers to describe unitary commercial offerings consisting of two or more services, some tariffed, some competitive, some unregulated. For purposes of this Order, a "package" refers to a service offering combining two or more tariffed services; a bundle is a service offering combining tariffed services and competitive or unregulated services.

- 6 The Company requests that the Commission waive or exempt certain regulatory requirements for packages and bundles under minimal regulation, specifically: RCW 80.36.100 (Tariff schedules to be filed and open to public), RCW 80.36.110 (Tariff changes), WAC 480-80 (Utilities general — tariffs and contracts), WAC 480-120-103(1)(a) (Application for service), and RCW 80.36.150 (Contracts). The Company also requests an exemption from the requirements of WAC 480-120-161 (form of bills) in its entirety.
- 7 The Company asserts that the pricing of bundles or packages of telecommunications services will be governed exclusively by the 2007 legislation, specifically section 2(1)(b).
- 8 Finally, the Company requests that a Commission order granting the petition be effective on the date it is entered. The Company states that it will treat any new packages and bundles introduced thereafter as being subject to minimal regulation, and that any current packages and bundles included in its tariffs will become subject to minimal regulation upon withdrawal from the tariff.
- 9 On August 24, 2007, the Public Counsel Section of the Attorney General's Office (Public Counsel) filed comments recommending the Commission not grant the Company's bundling petition. Public Counsel argues the petition is not supported by evidence on which the Commission can base findings Public Counsel asserts are required by statute. Specifically, Public Counsel claims that the Company has provided little or no information about the underlying costs of the component services in packages and bundles to determine if the Company has satisfied the cost coverage requirement in section 2(1)(b) of the 2007 legislation.
- 10 Further, Public Counsel objects to the Company's request to approve minimal regulation for categories of services, rather than specific bundles, and a grant of minimal regulation for unspecified future bundles. Finally, Public Counsel asserts that some of the waivers the Company requests are not in the public interest, in particular the statute governing contracts, and rules governing form of bills and applications for service.
- 11 At the Commission's August 29 and September 12, 2007, open public meetings, the Commission Staff recommended that the petition be granted in part and that all of the Company's current and future packaged and bundled telecommunications services be

subject to minimal regulation under the 2007 legislation. Staff recommended that the Commission require continued compliance with some portions of the form of bills rule (WAC 480-120-161) and deem only certain subsections inapplicable to the Company's minimally regulated bundles.

FINDINGS AND CONCLUSIONS

- 12 (1) The Washington Utilities and Transportation Commission is an agency of the state of Washington with jurisdiction over petitions filed by telecommunications companies requesting that packages and bundles be subject to minimal regulation under the 2007 legislation.
- 13 (2) The Company is a telecommunications company registered with the Commission but not classified as a competitive telecommunications company. The Company is thus a "noncompetitive telecommunications company" under the 2007 legislation.
- 14 (3) Under the 2007 legislation, a noncompetitive telecommunications company may petition the Commission to have its packages and bundles governed by minimal regulation.
- 15 (4) This matter was brought before the Commission at its regularly scheduled meetings on August 29 and September 12, 2007.
- 16 (5) The 2007 legislation does not require the Commission make specific evidentiary findings before granting a bundling petition. Section 2(1) of the legislation provides that the Commission shall grant a petition by a noncompetitive telecommunications company for its packaged and bundled telecommunications services to be governed by minimal regulation "where" (a) the noncompetitively classified service components of packages and bundles subject to minimal regulation remain available on a stand-alone basis under tariff, (b) the prices of such packages and bundles are not less than the cost of the tariffed components plus the cost of any competitively classified components and (c) the availability and prices of the stand-alone components are displayed in the company's tariff and on its website. *Laws 2007, Chapter 26, Section 2(1)*.
- 17 (6) Public Counsel reads this as requiring specific findings of fact that a company *has met* these conditions before providing bundles. We conclude that this

provision sets forth the requirements *to be met*, which can be satisfied more generally. First, the legislation does not specifically call for findings as a condition of approval, and its choice of the term “where” is at odds with other related provisions which specifically called for findings.³ When the Legislature uses certain statutory language in one instance and different language in another, a difference in legislative intent is presumed.⁴ We assume that if the Legislature had wanted to require an evidentiary record before the Commission could approve bundles, they would have said so.⁵

- 18 (7) We believe the 2007 legislation requires that we determine whether or not the statutory requirements for minimal regulation will be met without the necessity of detailed findings. When the Legislature in 2000 amended the law authorizing alternative forms of regulation for telecommunications companies, it replaced the requirement that the Commission make “written findings of fact as to each of the above stated policy goals” in the statute with the more general and flexible requirement to “find that, on balance, an alternative plan as proposed or modified fails to meet the considerations stated” in the statute.⁶ The 2007 legislation’s omission of any direction to make “findings” leads us to conclude that specific findings are not necessary.
- 19 (8) Second, common sense supports our interpretation.⁷ A requirement that the Commission make specific evidentiary findings would undermine the intent of the law to allow telecommunications companies to roll out bundled service offerings more quickly to meet market demand, and would instead impose more regulatory review and delay than existed before the bill’s enactment.⁸

³ Compare section 2(1) with section 2(3), which does require findings before the Commission may grant a waiver of regulatory requirements (“The Commission may waive any requirement under this title *if it finds* those requirements are no longer necessary to protect public interest.”)(emphasis added), and with Section 2(1) of the original HB 2103, which included a provision, later deleted, that would have authorized the Commission to classify as competitive any service “*that it finds* not to be an essential service....”

⁴ See *State v. Jackson*, 137 Wn.2d 712, 724, 976 P.2d 1229 (1999).

⁵ It is noteworthy that opponents to HB 2103 apparently came to the same conclusion. They based their position on a concern that it “is not appropriate to classify any telecommunications service as competitive without any demonstration or finding that there is effective competition for them.” *House Bill Report to H.B. 2103*.

⁶ Engrossed Substitute House Bill 2881 (2000 Regular Sess.), codified at RCW 80.36.135.

⁷ As the expert agency, the Commission’s interpretation of an ambiguous statute is entitled to deference. *State ex rel. Evergreen Freedom Found. v. Washington Educ. Ass’n*, 140 Wn.2d 41, 57, 50 P.3d 602 (2000).

⁸ While the legislative history on SHB 2103 is not extensive, the House staff summary of the public testimony shows clearly the intent of the bill’s proponents, including the Utilities and Transportation

- 20 (9) Third, the Legislature clearly intended the Commission to employ the new statute flexibly so as to achieve the legislation’s objective. The Commission can “waive any regulatory requirement under this title with respect to packages or bundles of telecommunications services if it finds those requirements are no longer necessary to protect public interest.”⁹ Thus, even if Public Counsel were correct that specific findings of fact were required, we would waive that requirement on the basis that such a requirement is not necessary to ensure compliance with the statutory conditions.
- 21 (10) As discussed below, we believe that a system of self-certification and regular reporting is sufficient to ensure compliance with the statute and protection of the public interest, while ensuring that a company can roll out a new bundled service without the undue delay required by the development of an evidentiary record for each new bundle. Moreover, the Commission retains authority to rescind any waiver or exemption granted pursuant to the 2007 legislation if necessary to protect the public interest, as all parties conceded at the August 29, 2007, open meeting.
- 22 (11) The 2007 legislation draws a distinction between packages and bundles subject to minimal regulation and the noncompetitive, fully regulated service components of such packages and bundles when offered on a stand-alone basis. The package or bundle is a service offering in its own right and will be

Commission (UTC) and several telecommunications companies, to speed the regulatory approval of bundles:

This bill benefits consumers by providing more flexibility with the type of services that may be put in a package in order to compete. Additionally, it allows quicker access to the market. There is increasing competition from cable providers who are packaging services quickly without regulatory oversight. With the fully regulated tariff process, it takes a significant amount of time to respond. This bill would allow regulated telecommunications companies to price [out] bundles and roll them out without seeking WUTC approval, once they have granted us approval of competitive classification. The industry is changing and it’s nothing like it used to be a few years ago. This bill allows flexibility to meet the challenge of this evolving market.

House Bill Report on HB 2103. The floor statements echoed this intent. The bill’s co-sponsor, Rep. Crouse noted that “[t]his bill is an agreed-upon bill by the UTC and telecom companies. It gives the UTC a little more flexibility when dealing in the area of competitive classifications for the telecom (sic).” Rep. Hudgins concurred: “This bill ... simply cuts down on how the UTC will take time to evaluate all these services as they used to do...” House floor statements on SHB 2103, March 8, 2007. Sen. Rockefeller stated that the bill “allows for a certain amount of deregulation of the telecommunications industry when it provides bundled telecommunications services.” Senate floor statement on SHB 2103, April 2, 2007.

⁹ 2007 legislation, Section 2(3).

offered pursuant to non-tariffed rates, terms and conditions, with consumers having the option to instead acquire the noncompetitive, regulated service components of such bundles and packages on a stand-alone basis pursuant to tariff and full regulation under the Commission's rules.

- 23 (12) The 2007 legislation allows for pricing flexibility provided that the prices of packages and bundles are not less than the cost of the tariffed components plus the cost of any competitively classified components.
- 24 (13) For its current bundled service offerings, the Company has provided and Staff has reviewed:
- a) tariff references demonstrating that the regulated components of their bundled services are readily and separately available at rates approved by the Commission as fair, just and reasonable;
 - b) cost data indicating that current prices exceed the cost of the tariffed components plus the cost of current competitively classified components;
 - c) current company tariffs and links to web pages displaying information regarding stand-alone noncompetitive services.
- 25 (14) For bundles that the Company will offer in the future, the Company agreed to provide reports or evidence of compliance with the requirements above upon request of the Commission or its Staff and must annually certify in the manner required by RCW 9A.72.085 that it is in compliance with this Order and the 2007 legislation. In addition, the Company will (a) keep its accounts according to Commission rules; (b) file financial reports as required by the Commission; and (c) cooperate with Commission investigations of customer complaints.
- 26 (15) We conclude that the information regarding current bundles, as well as the ongoing reporting and retention requirements, provide adequate assurance that the Company has met and will continue to meet the statutory requirements for applying minimal regulation to its packages and bundles of telecommunications services.
- 27 (16) The 2007 legislation allows the Commission to waive any regulatory requirement under Title 80 RCW with respect to packages or bundles of telecommunications services if it finds those requirements are no longer

necessary to protect public interest. The Commission also has the authority to waive application of its rules in Title 480 WAC by granting exemptions to the rules. As discussed below, the Company requests, and we grant in part, waiver of certain requirements under Title 80 RCW and exemption from certain rules.

- 28 (17) The Company represents that bundles of telecommunications services often cannot readily comply with the form of bills rule (WAC 480-120-161), and requests an exemption. In some cases bundled service includes unlimited calling, television, wireless or other non-regulated services that do not lend themselves to itemized listing by call. However, some provisions of the form of bills rule have significant consumer protection value and remain applicable even to bundles.¹⁰
- 29 (18) Specifically, we determine that exempting the Company from subsection (4)(a) of the form of bills rule would remove necessary precautions against “cramming”, the illegal practice of adding unauthorized third-party charges to the bill.¹¹ Nor should exemption be granted from subsections (5) (b) and (c), relating to itemization of taxes and FCC charges. Customers have an interest in knowing the applicable taxes and charges, whether they are tariffed, packaged, or bundled. Subsection (7) of the rule requires companies to provide an itemized statement, specifying certain detailed information. While we determine that the Company should be exempt from this rule, we find that the Company should still be required to comply with subsection (7)(b), which requires companies to include, at a customer’s request, “calculations of any credit or other account adjustment.” We also determine that the Company must continue to comply with subsections (8), (9) and (10) of the rule.¹² These subsections address methods of payment, companies that may bill customers or use billing agents, and credits for customer payments. These provisions should be retained and the Company should be required to comply with them.

¹⁰ See also, WAC 480-120-161 (7), which requires that carriers provide an itemized statement of all charges when requested by a customer – a useful bill history needed for resolution of billing disputes.

¹¹ WAC 480-120-161(4)(a) provides: “Bills may only include charges for services that have been requested by the customer or other individuals authorized to request such services on behalf of the customer, and that have been provided by the company.”

¹² WAC 480-07-161(11) exempts prepaid calling card services from subsections (1) through (10) of the rule. There is no need to waive this portion of the rule.

30 (19) Thus, we determine that the following provisions of the form of bill rule are no longer necessary to protect the public interest insofar as they apply to the Company's minimally regulated bundles:

WAC 480-120-161 (4) -- Bill organization

- (b) Name of each provider
- (c) Charges itemized by provider
- (d) Change in service provider
- (e) Web address of tariff

WAC 480-120-161 (5) -- Descriptions of billed charges

- (a) Individual calls itemized

WAC 480-120-161 (6) -- Charges for which service can be discontinued

WAC 480-120-161 (7) -- Itemized statement

- (a) Rates for individual services
- (b) "Calculations of time or distance charges for calls" only
- (c) Name and address of information service providers

31 (20) Competitively-classified services are typically exempt from statutes and rules that require publication of rates, terms and conditions. Because the 2007 legislation indicates that minimal regulation of bundles is to have the same meaning as in the competitive classification statute, exemption from these sections pursuant to minimal regulation of bundles is appropriate.

32 (21) The Company represents that applications for bundled services including non-tariffed, non-regulated services cannot reasonably be held to the tariff standards for initiating service in WAC 480-120-103(1)(a), which sets out the requirements for accepting and processing applications for service. For example, a bundle including satellite television cannot reasonably be provided in some areas of this state where regulated telephone service is available. We agree, and find no need to apply this rule to bundles provided the Company continues to accept applications for tariffed service in compliance with the rule.

33 (22) The Company requests exemption from our rules and waiver of statutes governing contracts as applied to bundles. The following provisions are no longer necessary to protect the public interest insofar as they apply to the Company's minimally regulated bundles:

RCW 80.36.150 (5):	Requiring that competitive and noncompetitive services be unbundled.
WAC 480-80-015:	Exemptions from rules.
WAC 480-80-101 – 134:	Tariff filing requirements, rejection, promotions
WAC 480-80-142(1), (7):	Individual filing requirement and retail restrictions

We deny the request as it pertains to other contract requirements, noting that the requested scope of the waiver is overbroad as it encompasses some statute and rule provisions that are not exempted even for competitively classified companies.

- 34 (23) Other regulatory requirements not listed above are still necessary to protect the public interest, and the Company must continue to comply. Some requirements of rule and law take on new significance in regard to the sale of bundled services. Given the new legal distinction between bundles or packages as independent service offerings and the full regulatory treatment applicable to the noncompetitive, regulated service components of such bundles and packages when offered on a stand-alone basis, we find it necessary to clarify the application of these rules to bundles.
- 35 (24) A customer who purchases a bundle and is disconnected for non-payment of charges potentially including non-regulated services should not be barred from subscribing to basic service. Accordingly, we clarify the class of service restrictions in our rules governing a carrier's ability to refuse new service to a customer with overdue, unpaid prior obligations governed by WAC 480-120-061(f), (g). Specifically, where a former customer of a package or bundle subject to minimal regulation that contained a basic service component has an outstanding balance on the prior account and applies for new basic service on a stand-alone basis, the carrier shall not condition provision of that new service on payment of an amount exceeding the stand-alone, flat rate service charges (including taxes, fees and surcharges) multiplied by the time period covered by the former customer's nonpayment of package or bundle price and adjusted for partial payments. The Company must cooperate with any Commission investigation arising from customers moving from minimally-regulated to tariffed services.

- 36 (25) In addition, it is important that customers considering the purchase of a minimally regulated bundle and customers disconnected for non-payment understand the protections available to them under Commission rules. To help customers understand their rights and responsibilities, we clarify that the Company must at a minimum provide the following notice to its customers:
- a) Direct written notice consistent with WAC 480-120-104 to all customers describing their rights and responsibilities when purchasing a bundle. The Company should provide this notice before minimal regulation of any existing bundle becomes effective. Customers subscribing to new bundle offerings must also be notified when beginning service consistent with WAC 480-120-104.
 - b) Direct and timely notice to customers disconnected for non-payment that they may be reconnected to basic service and the conditions related to that reconnection. The Company must work with Commission staff in developing this customer information.
- 37 (26) For purposes of RCW 19.86.170, actions or transactions associated with the Company's packaged and bundled offerings that are not governed by statutes and rules administered by the Commission shall not be deemed otherwise permitted, prohibited, or regulated by the Commission.

ORDER

THE COMMISSION ORDERS:

- 38 (1) Ellensburg Telephone Company's petition for minimal regulation of its packaged and bundled offerings under Laws 2007, Chapter 26, Section 2(1) is granted, in part, subject to the conditions stated in this Order.
- 39 (2) The Commission waives and exempts the statutes and rules identified in Appendix A with respect to packages or bundles Ellensburg Telephone Company may offer consistent with this Order. Appendix A is incorporated by reference as if set forth in full in the body of this Order,
- 40 (3) Any new package or bundle Ellensburg Telephone Company introduces after

the effective date of this Order shall be subject to minimal regulation, and any package or bundle Ellensburg Telephone Company currently offers shall be subject to minimal regulation when it withdraws the packages or bundles from its tariffs.

- 41 (4) Ellensburg Telephone Company must ensure that: (a) the non-competitively classified service components of packages and bundles subject to minimal regulation remain available on a stand-alone basis under tariff, (b) the price of such packages and bundles not be less than the cost of the tariffed components plus the cost of any competitively classified components and (c) the availability and prices of the stand-alone components are displayed in the company's tariff and on its website. Ellensburg Telephone Company must provide reports or evidence of compliance with the requirements above upon request of the Commission or its Staff and must annually certify in the manner required by RCW 9A.72.085 that it is in compliance with this Order and the 2007 legislation.
- 42 (5) Ellensburg Telephone Company must: (a) keep its accounts according to Commission rules; (b) file financial reports as required by the Commission; and (c) cooperate with Commission investigations of customer complaints.
- 43 (6) The Commission retains jurisdiction over the subject matter and Ellensburg Telephone Company to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective September 18, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

[Service Date September 18, 2007]

APPENDIX A