

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND	)	Docket No. UT-990946
TRANSPORTATION COMMISSION	)	
	)	FIRST SUPPLEMENTAL
v.	)	ORDER AMENDING ORDER
	)	AND APPROVING AMENDED
1-800-RECONEX, Inc.	)	STIPULATION IN PART
.....	)	

**SUMMARY**

**PROCEEDINGS:** This is a complaint proceeding brought by the Washington Utilities and Transportation Commission against 1-800-RECONEX, Inc. alleging violations of law and rule relating to the provisions of telecommunication service, Title 80 RCW and chapter 480-120 WAC. The Commission accepted a *Stipulated Settlement by Order* entered November 12, 1999 in which the Respondent agreed to expend \$20,000.00 on customer education and \$121,000.00 for systems and service improvements.

**PARTIES:** Gregory J. Trautman, Assistant Attorney General, Olympia, Washington, represents Commission Staff (Staff). William E. Braun, General Counsel, Hubbard, Oregon, represents Respondent 1-800-RECONEX, INC. (RECONEX).

**STIPULATION AND SETTLEMENT AGREEMENT:** On October 8, 1999, Commission Staff and 1-800-RECONEX, Inc. filed a *Stipulation for Settlement and for Entry of an Agreed Final Order* (Stipulation).

**COMMISSION ORDER:** On November 12, 1999, the Commission entered a *Decision and Order Approving Stipulation*.

**JOINT MOTION FOR CLARIFICATION:** On November 17, 1999, RECONEX and Staff filed a *Joint Motion for Clarification and Amendment of Commission Decision and Order Approving Stipulation*. On December 3, 1999, the parties filed *An Amended Proposed Paragraph 5A to Parties' Stipulation For Settlement And For Entry of An Agreed Final Order*.

**COMMISSION:** The Commission clarifies and amends the *Decision and Order Approving Stipulation* entered November 12, 1999, and accepts the *Stipulation and Settlement Agreement* as amended by the addition of Paragraph 5A to the parties' Stipulation and the provision that the Commission will not dismiss proceedings as requested by the parties, but will suspend proceedings for one year.

## MEMORANDUM

### I. Procedural History:

The matter was brought on by Commission Complaint, Order, and Notice of Prehearing Conference dated July 23, 1999. The Complaint alleged that Respondent RECONEX had violated chapter 480-120 WAC, RCW 80.36.130, and the terms of its filed tariff.

On November 12, 1999, the Commission filed a *Decision and Order Approving Stipulation*.

### II. Motion For Clarification And Amendment of Commission Decision And Order Approving Stipulation And Addition of Proposed Paragraph 5A.

On October 8, 1999, Staff and RECONEX filed a *Stipulation for Settlement and For Entry of An Agreed Final Order* (Stipulation) which the parties proposed would resolve all outstanding disputes raised by the Commission's complaint. The Settlement as filed stated that RECONEX committed to spend \$20,000.00 on a staff-approved customer education program by December 31, 1999 and \$121,000.00 for staff-approved system and service improvements. The Stipulation further provided that the Staff would conduct a Compliance Audit of random customer accounts in September 2000 and should RECONEX fail to meet more than two benchmarks set forth in Table A, RECONEX would become liable for a penalty of \$45,000.00.

The Decision and Order Approving the Stipulation for Settlement of November 12, 1999, imposed \$186,000.000 in penalties on RECONEX, \$141,000.00 of which was suspended pending RECONEX fulfilling of its commitment to expend \$20,000.00 on a Staff-approved customer education program and \$121,000.00 on Staff-improved systems and service improvements.

On November 17, 1999, Commission Staff and 1-800-RECONEX, Inc. filed a *Joint Motion for Clarification and Amendment of Commission Decision and Order Approving Stipulation*. On December 3, 1999, the parties filed *An Amended Proposed Paragraph 5A to Parties' Stipulation For Settlement And For Entry of An Agreed Final Order*.

The gravamen of the Motion is that the Commission Order did not interpret accurately the parties' intent and understanding of the Settlement and that it mis-characterized RECONEX's commitment. The parties state that they view the Stipulation as a negotiated obligation agreed to by RECONEX in lieu of a penalty, rather than an amount levied as a suspended penalty.

### III. Commission Discussion and Decision

Respondent is subject to chapter 480-120 WAC and RCW 80.36.130 and to the terms of its filed tariff. RECONEX demonstrates good faith in its efforts to cure past violations that gives credence to its stated determination to adhere to state law and Commission rules in the future.

The purpose of penalties is to secure compliance with the law. The Commission prefers that a company voluntarily come forward and commit to cooperate with Staff, and that it commit to take whatever steps are necessary to bring it into full compliance with state law and Commission rules in the near term.

The parties request that the Commission approve the *Amended Stipulation and Addition of Paragraph 5A*, which sets forth RECONEX's liability to expend the agreed-to monies and the ramifications which would occur should RECONEX not fulfill its obligations, but does not contemplate imposition of penalties. Paragraph 5A provides that the Commission reserves the right to enforce payments of such amounts by issuance of a Supplemental Order to Show Cause Why Payments Should Not be Required, as well as the right to enforce any aspect of the amended Stipulation by instituting evidentiary proceedings with all due speed in this proceeding.

RECONEX specializes in providing service to customers who have been disconnected by other companies. In doing so it serves a market that might otherwise have difficulty getting any service. The Commission's goals in its policies regarding settlements and penalties is to choose the most effective means to secure compliance. It is not the Commission's policy to ignore violations or to treat them lightly. We must operate in the public interest.

Considering the Commission's policy to encourage negotiated settlements and RECONEX's present attitude of good faith, supported by its commitment to expend whatever funds are necessary to bring it into compliance, the Commission believes there is a valid basis to grant the parties' Motion and amend the prior *Order* by eliminating the word "penalty" in those sections which set forth RECONEX's commitment to spend \$141,000.00 for customer education and systems and service improvements. The changes become one of semantics, since proposed Paragraph 5A sets forth RECONEX's obligation to expend the amounts to which it has agreed and, if it does not, provides that RECONEX would be liable immediately to pay such amounts into the public service revolving fund.

The *Amended Stipulation* achieves the equivalent result of the prior *Order* and accurately embodies the process and characterization of payments intended by the parties. Functionally, we believe that the Company's commitment to expend funds is

just as effective a deterrent as calling the expenditures a penalty would be. The agreement requires the expenditure of funds for the purposes of improving service and complying with statutes and rules, which are the Commission's ultimate goals.

We acknowledge that the company has a history of apparent multiple violations. Still, we think that our policy of seeking to correct deficiencies and solve problems is best served by accepting the settlement. The settlement provides benefit to the respondent's customers by improving the service. It provides benefit to the Commission by providing enforceable guarantees of service improvement, removing the need for considerable staff attention. It also provides benefit to the Commission in removing the need to suffer the expense, the risks and the uncertainties that any litigation involves. Finally, we believe that accepting the settlement will result in full compliance. Under the settlement, the company can lawfully provide a unique and needed service to customers more rapidly and with greater certainty than if we require extended litigation and the imposition of substantial penalties.

We approve the settlement not merely because it implements a Commission policy favoring settlements and technical assistance, but because doing so makes sense for the company's customers, for the Commission and Commission Staff, and for the company itself.

The Commission finds that the Stipulation as amended is an acceptable means to resolve all outstanding disputes raised by the Commission's *Complaint* and that it is consistent with the public interest and the intent of the parties. The *Amended Stipulation and Settlement Agreement* should be accepted and the prior *Order* should be amended.

## ORDER

The Commission amends the prior *Order* and grants the *Motion*. The *Amendment* is adopted as an amendment to the original *Stipulation*. The parties' proposed revised *Amendment* appended to this *Order* as Attachment 1, is adopted by reference and made a part of this *Order* as though fully set forth.

### IN SO DOING THE COMMISSION ORDERS:

1. The proceedings in this docket are suspended for up to one year at which time the Commission will review Staff's quarterly Status Reports as well as Staff's

Report on the findings of the September, 2000, audit to determine whether Respondent has complied with the terms of this Order. Should the Commission determine that Respondent has not complied the terms of this Order, state law, or Commission rules, it reserves the right to institute immediate evidentiary proceedings under this docket number.

2. The parties are to submit a Letter of Agreement to the provision of Order Number One within ten (10) days of the date of this Order.

3. Staff will submit quarterly Status Reports to the Commission beginning April 1, 2000. These reports are in addition to the Report on the September 2000 audit.

4. Should Respondent fail to spend the \$20,000.00 to which it has agreed to develop a Staff-approved customer education program by December 31, 1999, it shall become liable immediately for payment of \$20,000.00 to the public service revolving fund.

5. Should Respondent fail to spend the \$121,000.00 to which it has agreed to implement system and service improvements that are approved by Staff by the date of September, 2000 audit, it shall become liable immediately for payment of \$121,000.00 to the public service revolving fund.

6. The Commission reserves the right to enforce payments of the amounts set forth above into the public service fund by immediate issuance of a *Supplemental Order to Show Cause Why Payments Should Not Be Required* under this docket number.

7. The Commission grants the *Joint Motion of 1-800-RECONEX And Commission Staff for Clarification and Amendment of Commission Order and Order Approving Stipulation* filed November 17, 1999, and amended December 3, 1999, and as amended by this Order.

8. The Commission amends the prior *Order* as provided herein.

THE COMMISSION FURTHER ORDERS that jurisdiction is retained by the Commission to effectuate the provisions of this order.

DATED at Olympia, Washington, and effective this        day of  
December, 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

MARILYN SHOWALTER, Chairwoman -- I would reject the parties' Stipulation for Settlement and set the matter for hearing.

A settlement that includes no admission of violations and no penalties may be suitable for some cases, but not this one.

The Complaint alleges that Reconnex committed 372 separate violations of thirteen different regulatory requirements, with potential statutory penalties of \$372,000. These alleged violations include: allowing customers fewer than fifteen days to pay their bills; disconnecting or threatening to disconnect customers for nondelinquent accounts; failing to provide sufficient notice prior to disconnection; failing to restore service in a timely manner; refusing to allow customers to speak to a supervisor; failing to notify customers that their service would be delayed; failing to charge mandatory FCC charges, as required by Reconnex's tariff; selling services not permitted by its tariff; charging customers for amounts not approved in its tariff; charging customers for periods in which the customers were without service; and failing to timely file financial data with the Commission.

If these allegations are true, Reconnex should be found in violation of the law and should pay significant penalties. Finding violations and imposing penalties would send the appropriate signals to violators, non-violators, and consumers. Violators and would-be violators should know that Washington State will swiftly punish them if they repeatedly disregard its rules and abuse its consumers. Non-violators should know that there is value in being law-abiding and that unworthy competitors will pay a price for their conduct. Consumers should know that we firmly enforce rules that protect them.

The Stipulation requires that Reconnex spend \$121,000 on *itself* and another \$20,000 for a customer-information program. If these expenditures do no more than bring Reconnex into compliance with our laws and regulations, Reconnex will do no more than it and its competitors are already required to do. There will have been no meaningful adverse consequences for multiple and serious (alleged) violations.

Also, the Stipulation states that if Reconnex does not make the required expenditures, it becomes "liable" to pay equal amounts into the Public Service Revolving Fund. This is similar to imposing a suspended penalty, but the amounts have not been labeled as penalties, and the payor has not been labeled as a violator. Alternatively, the majority reserves the right to initiate an evidentiary hearing at the point at which Reconnex fails to comply with the initial terms of the Stipulation. This "deferred prosecution" avoids or delays determination of the facts of the case, of whether violations have occurred, and of what penalties ultimately may be appropriate.

In my view, a straightforward sequencing of our rules and statutes makes more sense in this case: complaint, fact-finding, penalties (if warranted), which could be suspended (if warranted) subject to conditions, and imposition of penalties for failure to perform conditions.

Given the nature of the allegations, I think the public interest requires swift adjudication and, if violations are found, swift penalties.

MARILYN SHOWALTER, Chairwoman

**NOTICE TO ALL PARTIES:**

**This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for consideration filed within 10 days of this order's service date pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).**