

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

ELLENSBURG TELEPHONE COMPANY
D/B/A FAIRPOINT COMMUNICATIONS

Respondent.

DOCKET UT-143633

NARRATIVE SUPPORTING
SETTLEMENT AGREEMENT

I. INTRODUCTION

1 This Narrative Supporting Settlement Agreement (“Narrative”) is filed pursuant to WAC 480-07-740(2)(a) on behalf of both Ellensburg Telephone Company d/b/a FairPoint Communications (“FairPoint” or “Company”) and the staff of the Washington Utilities and Transportation Commission (“Staff”) (hereinafter collectively referred to as “Parties” and individually as a “Party”). This Narrative summarizes the Settlement Agreement (“Settlement”). It is not intended to modify any terms of the Settlement.

II. PROPOSALS FOR REVIEW PROCEDURE

2 The Parties do not request a hearing to present the Settlement. The Parties instead respectfully request a streamlined review of the proposed Settlement on a paper record. If the Commission requires a hearing, the Parties are prepared to present one or more witnesses to testify in support of the Settlement. In addition, counsel for each Party will be available to respond to any legal questions that the Commission may have regarding the proposed Settlement.

III. SCOPE OF THE UNDERLYING DISPUTE

3 The underlying dispute concerns a complaint issued by the Commission against FairPoint at the request of Staff. FairPoint is a telecommunication company subject to regulation by the Washington Utilities and Transportation Commission (“Commission”) under Title 80 RCW. On May 23, 2014, FairPoint filed a proposed tariff revision with the Commission. Upon review, Staff discovered that FairPoint’s billed rates for the Joint User Business Subscription and the Residential Foreign Listing services were different than the rates listed in its Commission-approved tariff for these services. Staff initiated an investigation into FairPoint’s business practices to determine the scope and frequency of the improper charges. During its investigation, Staff reviewed information that FairPoint provided in response to data requests, the Company’s tariff, and relevant Commission records.

4 On March 25, 2015, the Commission served on FairPoint a Complaint for Penalties; Notice of Brief Adjudicative Proceeding (“Complaint”). The Complaint alleged that FairPoint committed violations of RCW 80.36.130 and RCW 80.36.110, and sought monetary penalties and customer refunds of improperly-billed charges.

5 The Parties subsequently engaged in settlement discussions, which resulted in a full settlement. The Parties’ agreement is reflected in the Settlement document, which was entered into voluntarily to resolve all matters that were in dispute.

IV. SUMMARY OF PROPOSED SETTLEMENT

6 The Settlement resolves all of the issues in dispute between the Parties. FairPoint admits that violations of RCW 80.36.130 and RCW 80.36.110 occurred, as alleged in the Complaint. The Parties agree that the Commission should assess penalties in the amount of

\$10,000. The amount shall be ordered due and payable no later than ten (10) days after a Commission order approving this Settlement becomes final.

7 FairPoint will also issue refunds to customers who were overcharged for the Joint User Business Subscription service for the period beginning July 1, 2007, and ending July 1, 2014, during its June 2015 billing cycle—a total refund of approximately \$5,368. FairPoint will clearly explain the reasons for the refunds to applicable customers, with language that has been reviewed and approved by Staff, via bill inserts or other appropriate means at the time the refunds are issued.

8 The Parties agree that, starting in the June 2015 billing cycle, FairPoint will start charging the rate in its published tariff for its Centrex service. FairPoint will provide its Centrex customers notice of the rate change and the reason for it, with language that has been reviewed and approved by Staff, via bill inserts or other appropriate means. FairPoint agrees not to seek recovery from its ratepayers of any lost revenue due the undercharges for its Centrex service.

V. STATEMENT OF THE PARTIES THAT THE SETTLEMENT AGREEMENT SATISFIES THEIR INTERESTS AND THE PUBLIC INTEREST

9 The Settlement represents a compromise of the positions of the two Parties. The Parties find it is in their best interests to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. Likewise, the public interest is served by concluding this dispute without the further expenditure of public resources on litigation expenses. For these reasons, and those contained in the individual statements of the Parties below, the Settlement as a whole is in the public interest, as well as the interests of the Parties. Staff and FairPoint, therefore, recommend that the Commission approve the Settlement in its entirety.

A. Statement of Staff

10 The Settlement satisfies both Staff's interest and the public interest because FairPoint admits to the violations, as alleged in the Complaint. The Settlement also satisfies both Staff's interest and the public interest by providing for a significant penalty assessment and full refunds to customers who were affected by the violations. Staff is satisfied that the penalty amount and scope of the refunds appropriately captures the seriousness and extent of the violations and the impact on affected customers. For these reasons, Staff finds that the Settlement satisfies both its interest and the public interest.

B. Statement of FairPoint

11 The Company agrees that the Settlement is an efficient means for resolving this matter. The Company has corrected the errors in its billing system brought to its attention by Staff, and has undertaken, on its own initiative, a complete review of all billed rates to ensure that tariffed rates are charged for all services. No further overcharges were found; the Settlement corrects the remaining undercharge that the Company discovered. The penalty and refunds agreed to in the Settlement are significant, however, the Company finds it in its best interest and the public interest to efficiently resolve this matter so that past errors are corrected and it can go forward in compliance. Accordingly, the Company supports the Settlement, and requests that the Commission approve it.

VI. LEGAL POINTS THAT BEAR ON PROPOSED SETTLEMENT

12 In WAC 480-07-700, the Commission states its support for parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest. The Parties have resolved all of the issues in dispute

between them, and their resolution complies with Commission rules and, as explained above, is consistent with the public interest.

VII. CONCLUSION

13 Because the Parties have negotiated a compromise on all of the issues in this dispute and because the settlement is in the public interest, both Parties request that the Commission issue an order approving the Settlement in full.

14 Respectfully submitted this 12th day of May, 2015.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

ELLENSBURG TELEPHONE COMPANY
D/B/A FAIRPOINT COMMUNICATIONS

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CHRISTOPHER M. CASEY
Assistant Attorney General
Counsel for the Utilities and
Transportation Commission Staff

Dated: _____, 2015

Dated: May 12, 2015

RICHARD A. FINNIGAN
Counsel for Ellensburg Telephone
Company d/b/a FairPoint Communications

Dated: _____, 2015

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WASHINGTON UTILITIES AND
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Dated: _____, 2015

ELLENSBURG TELEPHONE COMPANY
D/B/A FAIRPOINT COMMUNICATIONS



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Dated: May 12, 2015



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