

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

SETTLEMENT AGREEMENT

**I. INTRODUCTION**

1 This Settlement Agreement (“Settlement”) is entered into by the parties in this case:  
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”).

2 This Settlement is a “full settlement” as the term is defined in WAC 480-07-730(1)  
because it is entered into by all Parties, and it resolves all issues raised in the above docket.

**II. AGREED FACTS**

3 FairPoint is a telecommunication company subject to regulation by the Washington  
Utilities and Transportation Commission (“Commission”) under Title 80 RCW.

4 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.

5           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.

6           The Parties subsequently engaged in settlement discussions, which resulted in a full settlement. The Parties' agreement is reflected in this Settlement document, which was entered into voluntarily to resolve all matters that were in dispute. The Parties now wish to present their Settlement for the Commission's consideration and approval. This Settlement is filed in the interest of expediting the orderly disposition of this proceeding. The Parties understand that this Settlement is subject to Commission approval, and hereby respectfully request that the Commission issue an order approving this Settlement in its entirety. The Parties will jointly file supporting documentation, as required by WAC 480-07-740(2).

### III. AGREEMENT

7           **Admission of Violations** – FairPoint admits that violations of RCW 80.36.130 and RCW 80.36.110 occurred, as alleged in the Complaint.

8           **Monetary Penalty** – 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.

9           **Customer Refunds** – The Parties agree that FairPoint will 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—a total refund of approximately \$5,368. FairPoint will issue the refunds during its June 2015 billing cycle. 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. The refunds will apply to those customers who can be easily identified on the Company's billing system.

10           **Centrex Billing Practice** – After learning that it was charging rates inconsistent with its published tariff from Staff, FairPoint did an internal audit of its billed rates for each service it offers in Washington. The audit revealed that it was undercharging two dollars per month for its Centrex service.

11           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.

#### IV. GENERAL PROVISIONS

12           The Parties agree that this Settlement reflects the settlement of all contested issues between them in this proceeding. The Parties understand that this Settlement is not binding unless and until accepted by the Commission.

13           The Parties agree to cooperate in submitting this Settlement promptly to the Commission for acceptance. The Parties agree to support adoption of this Settlement in proceedings before the Commission through testimony or briefing. No party to this Settlement or their agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Settlement.

14           Each Party retains the right to provide information to the public about this Settlement after it is filed with the Commission. The Parties each agree to provide the other Party a copy of each news release or similar communication (hereafter “public communication”) that any Party intends to make regarding this Settlement, two business days in advance of publication. The Party receiving such public communication may review the public communication and make a reasonable request to the issuing Party to change the text of such public communication. Notwithstanding anything else in this paragraph, the Parties agree that each such public communication shall include a statement to the effect that this Settlement is subject to Commission approval and that Staff’s recommendation to approve the Settlement is not binding on the Commission itself.

15           Nothing in this Settlement shall limit or bar any other entity from pursuing legal remedies against FairPoint or FairPoint’s ability to assert defenses to such claims.

16           The Parties have entered into this Settlement to avoid further expense, inconvenience, uncertainty, and delay of continuing litigation. The Parties recognize that this Settlement represents a compromise of the Parties’ positions. As such, conduct, statements, and documents disclosed during negotiations of this Settlement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Settlement or any Commission order fully adopting those terms.

17           The Parties have negotiated this Settlement as an integrated document to be effective upon execution and Commission approval. This Settlement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Settlement in its entirety.

18 The Parties may execute this Settlement in counterparts and as executed shall constitute one agreement. Copies sent by facsimile or electronic mail are as effective as original documents.

19 The Parties shall take all actions necessary, as appropriate, to carry out this Settlement.

20 In the event that the Commission rejects or modifies any portion of this Settlement, each Party reserves the right to withdraw from this Settlement by written notice to the other Parties and the Commission. Written notice must be served within ten (10) business days of the Order rejecting part or all of this Settlement. In such event, no Party will be bound or prejudiced by the terms of this Settlement, and any Party shall be entitled to seek reconsideration of the Order.

Respectfully submitted this 12<sup>th</sup> day of May, 2015.

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

ELLENSBURG TELEPHONE COMPANY  
D/B/A FAIRPOINT COMMUNICATIONS

ROBERT W. FERGUSON  
Attorney General

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PATRICK L. MORSE  
Senior VP Governmental Affairs  
Ellensburg Telephone Company d/b/a  
FairPoint Communications



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

Dated: \_\_\_\_\_, 2015

Dated: May 12, 2015

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

Dated: \_\_\_\_\_, 2015

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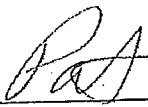
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ROBERT W. FERGUSON  
Attorney General


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

Dated: \_\_\_\_\_, 2015

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D/B/A FAIRPOINT COMMUNICATIONS

  
PATRICK L. MORSE  
Senior VP Governmental Affairs  
Ellensburg Telephone Company d/b/a  
FairPoint Communications

Dated: May 12, 2015

  
RICHARD A. FINNIGAN  
Counsel for Ellensburg Telephone  
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