

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UT-143633
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	COMPLAINT FOR PENALTIES;
)	NOTICE OF BRIEF
v.)	ADJUDICATIVE PROCEEDING
)	
ELLENSBURG TELEPHONE)	
COMPANY d/b/a FAIRPOINT)	(Set for Thursday, April 23, 2015,
COMMUNICATIONS)	at 9:30 a.m.)
)	
Respondent.)	
.....)	

1 The Washington Utilities and Transportation Commission (Commission), on its own motion, and through its Staff, alleges as follows:

I. BACKGROUND

2 On May 23, 2014, Ellensburg Telephone Company d/b/a FairPoint Communications (FairPoint or Company) filed a proposed tariff revision with the Commission. Upon review, Commission staff (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. Staff alleges that FairPoint violated multiple state laws, as described below.

II. PARTIES

3 The Washington Utilities and Transportation Commission is an agency of the State of Washington, authorized by state law to regulate the rates, services, facilities, and

practices of public service companies, including telecommunications companies, under RCW Title 80.

4 FairPoint is a telecommunications company subject to regulation by the Commission under RCW Title 80.

III. JURISDICTION

5 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, RCW 80.04.110, RCW 80.04.230, RCW 80.04.380, RCW 80.36, and WAC 480-120.

**IV. FIRST CAUSE OF ACTION
(301 Violations of RCW 80.36.130 for Failure to Charge Published Rates)**

6 The Commission, through its Staff, realleges the allegations contained in paragraphs 2-5 above.

7 RCW 80.36.130(1) provides, in part: “[N]o telecommunications company shall charge, demand, collect or receive different compensation for any service rendered or to be rendered than the charge applicable to such service as specified in its schedule on file and in effect at that time”

8 FairPoint violated RCW 80.36.130 on 301 occasions by charging customers rates for its Joint User Business Subscription service in conflict with those published in its tariff, WN U-4, between April 2013 and May 2014. This results in 301 separate and distinct violations.

9 The violations alleged in paragraph 8 resulted in FairPoint overcharging customers a total of \$752.50.

**V. SECOND CAUSE OF ACTION
(Two Violations of RCW 80.36.110 for Failure
to Provide Statutory Notice for Tariff Changes)**

10 The Commission, through its Staff, realleges the allegations contained in paragraphs 2-9 above.

- 11 RCW 80.36.110(1) provides, in part: “[N]o change shall be made in any rate, toll, rental, or charge, that was filed and published by any telecommunications company in compliance with the requirements of RCW 80.36.100, except after notice as required in this subsection.”
- 12 RCW 80.36.110(1)(a) further provides, in part: “For changes to any rate, toll, rental, or charge filed and published in a tariff, the company shall provide thirty days' notice to the commission and publication for thirty days as required in the case of original schedules in RCW 80.36.100.”
- 13 FairPoint violated RCW 80.36.100 on two (2) occasions by failing to provide statutory notice for tariff rate changes prior to changing the rates billed from \$0.95 to \$3.45 for its Joint User Business Subscription service and \$0.45 to \$0.95 for its Residential Foreign Listing service. This results in two (2) separate and distinct violations.

VI. APPLICABLE LAW

- 14 Under RCW 80.04.380, the Commission may penalize a public service company that violates any provision of RCW Title 80 or any rule of the Commission up to \$1,000 for each and every offense. Under the statute, every violation is considered a separate and distinct offense, and, in the case of a continuing violation, every day's continued violation is deemed to be a separate and distinct offense.
- 15 Under RCW 80.04.230, if the Commission finds that the public service company charged an amount for any service rendered in excess of the lawful rate in force at the time such charge was made, the Commission may order the public service company to refund the amount of the overcharges.

VII. REQUEST FOR RELIEF

- 16 Staff requests that the Commission find that FairPoint committed a total of 303 violations of state laws as set forth in the allegations above.
- 17 Staff requests that the Commission impose monetary penalties on FairPoint under RCW 80.04.380 of up to \$1,000 for each violation.

- 18 Staff requests that the Commission order FairPoint to refund excess charges to customers who were overcharged as set forth in the allegations above.
- 19 Staff further requests that the Commission order such other or further relief as appropriate under the circumstances.

VIII. PROBABLE CAUSE

- 20 Based on a review of Staff's investigation report and all supporting documents, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this complaint.

IX. NOTICE OF BRIEF ADJUDICATIVE PROCEEDING

- 21 Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission determines that a brief adjudicative proceeding is appropriate for determining whether the alleged violations occurred and, if so, the appropriate remedy for those violations.
- 22 **THE COMMISSION GIVES NOTICE that it will hold a brief adjudicative proceeding in this matter at 9:30 a.m., on Thursday, April 23, 2015, in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**
- 23 The record in this case will consist of any documents regarding the matter that are considered by or prepared for the presiding officer for the brief adjudicative proceeding and a transcript of any oral statements given at the hearing, which statements will be given under oath.
- 24 Written notice of any other stage in the proceeding or other formal proceedings that the Commission may deem appropriate will be given during the course of this case. The Commission will provide at its offices in Olympia, Washington, copies of documents in the current record for use by the parties or others who may want to review them.

25 Parties wishing to submit any other documents for consideration at the brief adjudicative proceeding must file with the Commission a list enumerating and describing any such documents by **5:00 p.m., on April 16, 2015**, and bring an original and three (3) copies to the hearing. Filing shall be in accordance with WAC 480-07-140 and – 145.

26 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the brief adjudicative proceeding set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.**

27 The names and mailing addresses of all parties and their known representatives are as follows:

Complainant: Washington Utilities and Transportation
Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Christopher Casey
Assistant Attorney General
1400 S. Evergreen Park Drive SW
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1189
ccasey@utc.wa.gov

Respondent: Patrick L. Morse – SR VP Governmental Affairs
Ellensburg Telephone Company
d/b/a FairPoint Communications
305 N. Ruby Street
Ellensburg, WA 98926
(620) 227-4409
pmorse@fairpoint.com

- 28 Administrative Law Judge Rayne Pearson, from the Commission's Administrative Law Division, will preside during this proceeding
- 29 The Commission will give parties notice of any other procedural phase of the proceeding in writing or on the record, as appropriate during this proceeding.

DATED at Olympia, Washington, and effective March 25, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge
Director, Administrative Law Division

Inquiries may be addressed to:

Executive Director and Secretary
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

PLEASE NOTE: Hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: Steven V. King, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION.)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes) _____ (No) _____

Do you need a certified sign language interpreter?

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (_____) _____