

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UT-143633
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 01
)	
v.)	
)	
ELLENSBURG TELEPHONE)	INITIAL ORDER APPROVING
COMPANY D/B/A FAIRPOINT)	SETTLEMENT AGREEMENT
COMMUNICATIONS,)	
)	
Respondent.)	
.....)	

BACKGROUND

- 1 On March 25, 2015, the Washington Utilities and Transportation Commission (Commission) through its regulatory staff (Staff)¹ filed a complaint against Ellensburg Telephone Company d/b/a FairPoint Communications (FairPoint or Company) and issued a Notice of Brief Adjudicative Proceeding set for April 23, 2015, at 9:30 a.m. (Complaint). The Complaint alleges that the Company committed 303 violations of Commission rules and state laws, and seeks monetary penalties in addition to customer refunds. On March 30, 2015, the hearing was rescheduled at the parties’ request for May 6, 2015, at 9:30 a.m.

- 2 On April 14, 2015, Staff notified the Commission that the parties had reached a settlement in principle and requested the Commission suspend the brief adjudicative proceeding pending further negotiations. On May 12, 2015, Staff filed a settlement agreement on behalf of the parties (Settlement Agreement) and requested that the Commission cancel the scheduled hearing.

¹ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

- 3 As part of the Settlement Agreement, FairPoint admits that its conduct violated RCW 80.36.130 and RCW 80.36.110. FairPoint agrees to refund a total of approximately \$5,368 to customers who were overcharged for the Joint User Billing Subscription service between July 1, 2007, and July 1, 2014. FairPoint agrees to issue the refunds during its June 2015 billing cycle. The parties agree that the Commission should assess a penalty of \$10,000, which should be due and payable within 10 days of the effective date of this Order.
- 4 The parties also agree that, beginning with its June 2015 billing cycle, the Company will start charging its published rate for Centrex service. An internal audit found that the Company has historically undercharged its customers \$2.00 per month for this service. FairPoint agrees to provide notice to its customers about the rate change in the form of a bill insert or some other appropriate means, which Staff will approve in advance. FairPoint also agrees not to seek recovery from its ratepayers of any lost revenue due to its past practice of undercharging for Centrex service.
- 5 Christopher Casey, Assistant Attorney General, Olympia, Washington, represents Staff. Richard Finnigan, Law Office of Richard A. Finnigan, Olympia, Washington, represents FairPoint.

DISCUSSION AND DECISION

- 6 WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.” Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:
- Whether any aspect of the proposal is contrary to law.
 - Whether any aspect of the proposal offends public policy.
 - Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

- 7 We approve the Settlement Agreement without condition. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. FairPoint admits that its conduct violated RCW 80.36.130 and RCW 80.36.110. The Company also agrees to refund all of the customer overcharges that resulted from these violations. The penalty the Company agrees to pay, although significantly reduced, remains substantial. We also find that the changes the Company made as a result of its internal audit provide a reasonable basis to believe that the Company will increase its efforts to comply with applicable statutes and rules going forward.
- 8 The terms of the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. The Settlement Agreement supports the Commission's goal of compliance by requiring the Company to take specific actions to remedy the violations, and permits the Company to pay a reduced penalty. Given these factors, we find the Settlement Agreement is consistent with the public interest and should be approved as filed.

ORDER

THE COMMISSION ORDERS:

- 9 (1) The Settlement Agreement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of the disputed issues in this docket.
- 10 (2) Ellensburg Telephone Company d/b/a FairPoint Communications must provide credits during its June 2015 billing cycle to all customers who were overcharged for the Joint User Billing Subscription service between July 1, 2007, and July 1, 2014.
- 11 (3) Beginning in its June 2015 billing cycle, Ellensburg Telephone Company d/b/a FairPoint Communications shall charge its published rate for Centrex service.
- 12 (4) Ellensburg Telephone Company d/b/a FairPoint Communications shall provide a notice to its customers about the rate change for its Centrex service in the form of a bill insert or other appropriate means, which Staff will approve in advance.

The Company shall not to seek recovery from its ratepayers of any lost revenue due to its past practice of undercharging for Centrex service.

- 13 (5) Ellensburg Telephone Company d/b/a FairPoint Communications is assessed a penalty of \$10,000, which is due and payable within 10 days of the effective date of this Order.
- 14 (6) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective May 21, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Exhibit A
Settlement Agreement