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June 10, 2014

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, Washington 98504-7250

RE: *UTC v. Grasshopper Group, LLC*
Docket UT-132153

Dear Mr. King:

Enclosed for filing in the above-referenced docket are the original and two copies of an Answer to Petition for Interlocutory Review, on behalf of Commission Staff, and Certificate of Service.

Sincerely,

BRETT P. SHEARER
Assistant Attorney General

BPS/emd

Enclosures

cc: Michael P. Donahue, Esq. w/enc.
Ronald E. Quirk, Esq. w/enc.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. GRASSHOPPER GROUP, LLC, Respondent.	DOCKET UT-132153 ANSWER OF COMMISSION STAFF TO RESPONDENT'S PETITION FOR INTERLOCUTORY REVIEW

I. STAFF'S ANSWER TO GRASSHOPPER GROUP, LLC'S PETITION FOR INTERLOCUTORY REVIEW

1 Utilities and Transportation Commission Staff (Commission Staff or Staff) requests the Utilities and Transportation Commission (UTC or Commission) deny Grasshopper Group LLC's (Grasshopper or Company) petition for interlocutory review of Order 02 (petition).

II. BRIEF PROCEDURAL HISTORY

2 On April 16, 2014, the Commission, on its own motion and through Staff, issued a complaint (Complaint) seeking monetary penalties against Grasshopper. The Complaint principally alleged that the Company had filed an inaccurate 2012 Annual Report and the report remained inaccurate until Grasshopper filed a revised version on August 9, 2013.[1]

[1] The Complaint did not make any assertion as to the reason or motivation for the inaccuracy.

Grasshopper filed its answer and motion to dismiss the Complaint under WAC 480-07-380, and Commission Staff subsequently filed a response. Administrative Law Judge Adam E. Torem denied the Company's motion to dismiss in Order 02 issued May 28, 2014.

III. INTERLOCUTORY REVIEW

3 Under WAC 480-07-810(2), interlocutory review is available at the Commission's discretion. The Commission may accept review if it finds that a review is necessary to prevent substantial prejudice that would not be remediable in a post-hearing review. WAC 480-07-810(2)(b). Additionally, the Commission may accept review where such a review could save the Commission and the parties substantial effort or expense. WAC 480-07-810(2)(c).

IV. SUMMARY OF STAFF'S POSITION

4 The absence of an interlocutory review does not pose any prejudice to Grasshopper, and, at this point in the proceeding, an interlocutory review only increases effort and expense. Given the simplicity of the underlying complaint and an evidentiary hearing already scheduled for June 17, 2014, a hearing represents the most efficient and cost-effective means of resolving the present dispute. The Complaint itself is two-and-a-half pages long, and Grasshopper has already filed approximately 75 pages in various forms of response. Further review will only serve to create additional expense and delay. The Commission retains discretion in allowing interlocutory review, and the circumstances in this case support Staff's position to deny Grasshopper's petition.

5 The Company's substantive arguments in support of its petition incorrectly describe the nature of precedent and misstate conclusions found in Order 02. Grasshopper's Petition also reiterates factual arguments that are immaterial in the context of a motion to dismiss.

V. ARGUMENT

A. Jurisdiction

6 Grasshopper's petition states that Order 02 erroneously concludes that the Company's services are not intrastate and thus subject to Commission regulation.[2] Staff is unable to find any such conclusion in Order 02. Grasshopper's argument seeks review of a position that the Commission has not actually taken. As a result, the Company's petition does not indicate any amount of prejudice, and additional review would only cause unnecessary delay.

7 Order 02 does conclude that the Company willingly registered as a competitively classified telecommunications company in Washington and reiterated Grasshopper's own statement that the Company had "voluntarily subjected itself to registration and compliance reporting in the State of Washington."[3] Moreover, as Staff has previously argued, it is wholly unnecessary for the Commission to take a position on the jurisdictional nature of Grasshopper's services in this proceeding. Grasshopper voluntarily registered with the Commission and was promptly notified of its reporting obligations as a registered company; therefore, the Company must comply with the relevant rules and regulations to which it has voluntarily submitted itself.

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[2] *WUTC v. Grasshopper Group, LLC*, Petition for Interlocutory Review of Grasshopper Group LLC ("Petition"), Docket No. UT-132153, pp. 2-3, at ¶ 6. Grasshopper may have intended to replace "intrastate" with "interstate." In either case, Staff is unable to find such a conclusion in Order 02.
[3] *WUTC v. Grasshopper Group, LLC*, Order 02, Docket No. UT-132153, p. 4, at ¶13.

B. Inaccurate Filings

8 Grasshopper's petition next argues that Order 02 erroneously concludes that timely but inaccurate annual reports violate RCW 80.04.080 and WAC 480-120-382.[4] The Company principally supports its argument by citing to a previous settlement agreement as a binding precedent:[5] Grasshopper mischaracterizes the contents of the cited settlement agreement, and Grasshopper's assessment of the settlement agreement as a binding precedent is inaccurate. *See WUTC v. Qwest Corp.*, 2004 WL 3159259 (Wash. U.T.C.).

9 Settlement agreements are not binding precedent. Settlement agreements reflect an agreement entered into by the parties as a compromise to avoid further litigation.[6] Thus, any agreement exists solely within the context of the settlement and neither party necessarily accedes to the other party's position. In *Qwest*, Staff and Qwest entered into a settlement agreement. *Id.* Therefore, the settlement agreement in *Qwest* is neither a touchstone case nor binding on the Commission in the present, or any other, proceeding. Grasshopper's reliance on a settlement agreement as binding precedent is incorrect, further demonstrating the absence of any prejudice to the Company.

C. Review will not save the UTC or Grasshopper Substantial Effort and Expense

10 The Commission has scheduled an evidentiary hearing in this matter for June 17, 2014. Given the current proximity to the hearing date, an interlocutory review is already too late to avoid substantial effort or expense to the Commission, Staff, or the Company. The parties are already scheduled to resolve the dispute within approximately one week and any

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[4] Petition, p. 3, at ¶6. Grasshopper's petition also states that Order 02 concluded the Company filed its annual report using data it believed to be correct. *Id.* at p. 6, ¶13. Staff is unable to find any such conclusion in Order 02.

[5] *Id.* at p. 7, ¶¶ 17-18.

[6] Paragraph 4.6 of the settlement agreement between Staff and Qwest states, "The Parties recognize that this Agreement represents a compromise of the positions the Parties may otherwise assert in this proceeding."

potential further review will simply add to the expense and delay. Furthermore, Grasshopper retains the ability to pursue a post-hearing review, and there is no reason to expedite that process at the expense of the upcoming evidentiary hearing.

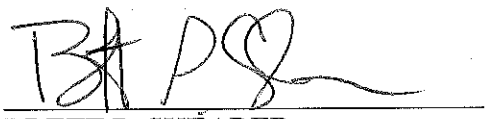
VI. CONCLUSION

11 For the reasons described above, the Commission should reject Grasshopper's petition for interlocutory review and allow this matter to proceed to evidentiary hearing on June 17, 2014. The Company's petition misstates the conclusions in Order 02 and misinterprets Commission precedent. Therefore, the Grasshopper's petition should be denied.

DATED this 10th day of June 2014.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General



BRETT P. SHEARER
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff

Docket UT-132153
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached Answer to Petition for Interlocutory Review upon the persons and entities listed on the Service List below by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 10th day of June, 2014.

ELIZABETH M. DeMARCO

***For Grasshopper Group, LLC*:**

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