



2 After notice to the parties, the matters alleged in the complaint were the subject of a hearing before the Commission on February 4, 2013, in Olympia, Washington. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington represented the Commission's regulatory staff (Commission Staff or Staff).<sup>1</sup> During the hearing, Staff presented the testimony of Mathew Perkinson, Compliance Investigator. None of the companies named in the complaint appeared at the hearing or presented evidence.

3 Evidence at the hearing showed that all of the respondents are telecommunications companies, which are public service companies under RCW 80.04.010(23). The evidence also showed that all of the respondents received notice of the hearing and that none of them appeared.<sup>2</sup> Staff asked the Commission to declare Cospeed, CVC, Nowyr, Pelzer, Priceright, Puget Sound Telecommunication, Telefonica, Vanco, and Vertex in default.<sup>3</sup>

4 At the hearing, Commission Staff moved to dismiss the complaint against Net Talk, Telmex, and Go Solo because by the time of the hearing, the companies had filed their annual reports, paid or had no outstanding regulatory fees, and also paid any penalties assessed against them.<sup>4</sup>

5 Staff next moved to dismiss the complaint against Grasshopper Group. Commission Staff testified that Grasshopper Group had filed its annual report and paid its outstanding regulatory fee, and was assessed but had not yet paid its statutory penalty.<sup>5</sup>

6 With respect to Cospeed, CVC, Nowyr, Pelzer, Priceright, Puget Sound Telecommunication, Telefonica, Vanco, and Vertex, Staff requested the Commission to find them in default, and to revoke their registrations. The record reflects that these companies, like all of the respondents, were mailed notice of the hearing by first-class

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<sup>1</sup> In a formal proceeding, 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.

<sup>2</sup> TR at 12: 21–25 and 13: 1–9; *see also*, Perkinson, Exh. 1.

<sup>3</sup> TR at 7: 3–13.

<sup>4</sup> TR at 19: 7–12, 22: 20–24, and 15: 4–5.

<sup>5</sup> TR at 17: 3–25, 18: 1–10, 28: 24–25, and 29: 1–3.

mail at their last known addresses and failed to appear or otherwise respond to the complaint.<sup>6</sup> Staff requested that the Commission receive evidence regarding the substantive issues set forth in the complaint against Cospeed, CVC, Nowyr, Pelzer, Priceright, Puget Sound Telecommunication, Telefonica, Vanco, and Vertex.

7 Mr. Perkinson testified that the Financial Services section of the Commission provides him with a list of all companies that are delinquent in filing their annual reports or paying their regulatory fees. The list is generated by the Commission's Annual Report Tracking System (ARTS). Mr. Perkinson reviewed ARTS data for each company named in the complaint as late as the morning of the hearing, February 4, 2013, and determined that Cospeed, CVC, Nowyr, Pelzer, Priceright, Puget Sound Telecommunication, Telefonica, Vanco, and Vertex had not filed their annual reports for 2011 or paid their outstanding annual fees.<sup>7</sup>

8 On March 7, 2013, Telefonica filed a letter with the Commission stating that Telefonica was then filing its annual report and paying its fee and penalty (Telefonica Letter). On March 21, 2013, Commission Staff filed a response to the Telefonica Letter stating that Staff views the letter as a motion to reopen the record under WAC 480-07-830. Staff supports reopening the record to receive Telefonica's report and evidence that Telefonica has paid its annual fee and penalty.<sup>8</sup>

### DISCUSSION

9 The issue in this proceeding is whether the companies complained against have filed their annual reports, paid their annual regulatory fees, and if applicable, paid their statutory penalties. If the companies have not fulfilled their obligations, the Commission must determine whether or not to revoke their registrations.

10 Under RCW 80.04.080, every telecommunications company operating in Washington is required to file an annual report that sets forth certain information about the company's operations during the preceding year. In addition, under RCW 80.24.010, every telecommunications company must pay an annual regulatory fee on or before the date specified by the Commission. WAC 480-120-382 requires telecommunications companies to file annual reports and pay regulatory fees by May 1 of each year. The

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<sup>6</sup> Perkinson, Exh. 1.

<sup>7</sup> TR at 8: 11-17.

<sup>8</sup> Commission Staff Response at 2.

Commission may revoke a company's registration for good cause, which includes, but is not limited to, the failure to file an annual report or pay regulatory fees.<sup>9</sup> In addition, and germane to this proceeding, any party that fails to appear at a Commission hearing may be held in default.<sup>10</sup>

- 11 Net Talk, Telmex, Go Solo, and Telefonica are telecommunications companies and public service companies as defined in RCW 80.04.010(23). Net Talk, Telmex, Go Solo, and Telefonica provide services in Washington for compensation and are required to submit annual reports to the Commission and pay regulatory fees under RCW 80.04.080 and 80.24.010. A review of the Commission's files and records shows that Net Talk, Telmex, and Go Solo failed to timely file their annual reports due on May 1, 2012, and failed to pay their regulatory fees; however, by February 4, 2013, the companies had filed their reports and paid their regulatory fees and penalties. Accordingly, because at the time of this order the companies are in compliance with Commission rules, the complaints against Net Talk, Telmex, and Go Solo will be dismissed.
- 12 Telefonica failed to timely file its annual report and pay its regulatory fee; however, on January 15, 2013, Telefonica paid the penalty assessed against it, and the Telefonica Letter requests that we consider evidence that on March 6, 2013, after the evidentiary hearings in this proceeding, Telefonica filed its 2011 annual report and paid its regulatory fee.<sup>11</sup> As Staff requests, the Commission will treat the Telefonica Letter as a motion to reopen the record under RCW 480-07-830 and will exercise its discretion to grant that motion. The Commission's primary concern is compliance with regulatory obligations, and Telefonica has made the requisite filings and paid its regulatory fee and the penalty assessed for failure to file on time. Accordingly, the Commission will admit the evidence of Telefonica's compliance and accept that evidence as providing sufficient grounds to dismiss the complaint against Telefonica.
- 13 Grasshopper Group is a telecommunications company and public service company as defined in RCW 80.04.010(23). Grasshopper Group provides services in Washington for compensation and is required to submit annual reports to the Commission and pay regulatory fees under RCW 80.04.080 and 80.24.010. A review of the Commission's files and records shows that Grasshopper Group failed to timely file its annual report

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<sup>9</sup> WAC 480-121-060.

<sup>10</sup> RCW 34.05.440; WAC 480-07-450.

<sup>11</sup> Perkinson Declaration at 2-3.

due on May 1, 2012, and failed to pay its regulatory fee; however, by February 4, 2013, Grasshopper Group filed its report and paid the regulatory fee. Nonetheless, Grasshopper Group has not paid the statutory penalty assessed against it. Accordingly, the complaint against Grasshopper Group will be dismissed on the condition that it pays its penalty within 20 days of the date of this order.

14 Cospeed, CVC, Nowyr, Pelzer, Priceright, Puget Sound Telecommunication, Vanco, and Vertex are telecommunications companies and public service companies as defined in RCW 80.04.010(23). Cospeed, CVC, Nowyr, Pelzer, Priceright, Puget Sound Telecommunication, Vanco, and Vertex provide services in Washington for compensation and are required to submit annual reports to the Commission and pay regulatory fees under RCW 80.04.080 and 80.24.010. A review of the Commission's files and records shows that Cospeed, CVC, Nowyr, Pelzer, Priceright, Puget Sound Telecommunication, Vanco, and Vertex failed to timely file their annual reports due on May 1, 2012, and failed to pay their regulatory fees. Accordingly, Cospeed, CVC, Nowyr, Pelzer, Priceright, Puget Sound Telecommunication, Vanco, and Vertex's registrations should be revoked.

#### FINDINGS OF FACT

- 15 The Commission makes and enters the following summary findings of fact, incorporating by reference pertinent portions of the preceding detailed findings:
- 16 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.
- 17 (2) On December 31, 2012, the Commission entered a complaint and notice of hearing in this matter. The complaint against each of the respondents seeks revocation of each company's telecommunications license for failure to file an annual report for 2011 and failure to pay regulatory fees for 2012. The notice of hearing scheduled a hearing to convene on February 4, 2013, in Olympia, Washington. None of the respondents appeared at the hearing.
- 18 (3) Each of the respondents failed to timely file an annual report for 2011 and also failed to timely pay regulatory fees for 2012.
- 19 (4) At the time of the hearing in this matter, each of the respondents fell into one of the following three categories: (1) filed annual report and paid annual fee and

penalty; (2) filed annual report, paid annual fee, not paid penalty; or (3) failed to file annual report and also failed to pay annual fee or penalty.

- 20 (5) On March 7, 2013, Telefonica filed a letter with the Commission in which Telefonica stated that it had filed its annual report, paid its regulatory fee, and paid a late filing penalty in the amount of \$2,100.

### CONCLUSIONS OF LAW

21 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefor, the Commission makes the following summary conclusions of law incorporating by reference pertinent portions of the preceding detailed conclusions:

- 22 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and the parties to, this proceeding. The respondents are telecommunications companies and public service companies as defined in RCW 80.04.010(23).
- 23 (2) All of the respondents are in default of the Commission's Complaint under RCW 34.05.440 and WAC 480-07-450.
- 24 (3) The Commission may, after notice and opportunity for hearing, revoke the registration of telecommunications companies for good cause.
- 25 (4) The failure to timely file annual reports and pay regulatory fees constitutes good cause to revoke the registrations of telecommunications companies.
- 26 (5) Respondents in each of the three categories should be treated as follows: (1) the Commission will not revoke the registration of companies that have now filed their annual reports and paid their regulatory fees and penalties, (2) for the company that has now filed its annual report and paid its regulatory fee but not the late penalty, the Commission will not revoke its registration on the condition that it pay the penalty within 20 days of the date of this order, and (3) the remaining companies have filed no reports and paid no fees or penalties, and the Commission will revoke their registrations.
- 27 (6) Under WAC 480-07-830, in uncontested proceedings, the Commission has the discretion to reopen a record in a proceeding to allow receipt of written evidence when otherwise lawful. Consistent with its primary interest in ensuring companies comply with regulatory requirements, the Commission will exercise

its discretion to reopen the record and accept the Telefonica Letter in which Telefonica states that it has filed its annual report, paid its regulatory fee, and paid a late filing penalty in the amount of \$2,100.

**ORDER**

**THE COMMISSION ORDERS THAT:**

- 28 (1) All of the respondents are in default of the Commission's Complaint.
- 29 (2) The complaints against Net Talk, Telmex, Go Solo, and Telefonica are dismissed.
- 30 (3) The complaint against Grasshopper Group is dismissed on the condition that Grasshopper Group pays its statutory penalty on or before 20 days after the date of this order. If such penalties are not timely paid, the Commission will revoke Grasshopper Group's registration.
- 31 (4) The registrations of Cospeed, CVC, Nowyr, Pelzer, Priceright, Puget Sound Telecommunication, Vanco, and Vertex are revoked for good cause.

DATED at Olympia, Washington, and effective March 27, 2013.

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**STEPHANY A. WATSON**  
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 20 days after the entry of this initial order to file a petition for administrative review (Petition for Review). What must be included in any Petition for Review and other requirements for it are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an answer (Answer) to a Petition for Review within 10 days after service of the Petition for Review.

WAC 480-07-830 provides that before the Commission enters 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. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

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 for Review 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). To file a Petition for Review or Answer with the Commission, you must file an original and three copies of your Petition for Review or Answer by mail delivery to:

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