

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UT-132153
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 03
)	
v.)	
)	
GRASSHOPPER GROUP, LLC,)	ORDER DENYING PETITION FOR
)	INTERLOCUTORY REVIEW AND
Respondent.)	DENYING REQUEST FOR
)	CONTINUANCE
.....)	

- 1 **PROCEEDINGS.** This proceeding arises out of a complaint filed by Commission Staff on April 16, 2014, against Grasshopper Group, LLC (Grasshopper or Company). The complaint alleges that Grasshopper filed an inaccurate 2012 Annual Report and paid incorrect regulatory fees, in violation of RCW 80.04.080 and WAC 480-120-382. The complaint alleges that Grasshopper did not correct its filing until August 9, 2013, a period of 101 days after the May 1, 2013, deadline for filing annual reports. The complaint seeks a penalty of up to \$30,300.
- 2 On May 5, 2014, Grasshopper filed a motion to dismiss the complaint. Commission Staff filed its response to the motion on May 23, 2014.
- 3 On May 28, 2014, the Commission denied Grasshopper’s motion to dismiss, addressing the Company’s only two arguments that might support such a motion:¹

¹ *WUTC v. Grasshopper Group, LLC*, Docket UT-132153. Order 02 Denying Grasshopper’s Motion to Dismiss (May 28, 2014). In Order 02 the Commission found no need to address the Company’s remaining arguments addressing potential mitigating factors that do not affect the Commission’s disposition of Grasshopper’s motion to dismiss. Order 02 ¶ 6.

- The Company argues that the Commission lacks jurisdiction over Grasshopper's services because the Company does not engage in the provision of intrastate telecommunications services in Washington.
- Grasshopper argues that WAC 480-120-382's requirement for competitively classified telecommunications companies to file annual reports by May 1 of each year does not specify that these reports must be accurate. It follows, according to Grasshopper, that the Company filing an inaccurate report on April 30, 2013, which remained uncorrected until August 8, 2013, does not constitute a violation of the filing requirement.

4 On the question of jurisdiction, Order 02 states:

Grasshopper willingly registered as a competitively classified telecommunications company in Washington [in December 2009]. As noted above, the Company's motion acknowledges that doing so "voluntarily subjected itself to registration and compliance reporting in the State of Washington." No matter the overall nature of its business, this Company has registered to conduct business in Washington, has reported intrastate revenue in Washington, and continues to do so. Grasshopper, like every other competitively classified telecommunications company in this state, must comply with RCW 80.04.080 and WAC 480-120-382. The Commission has jurisdiction to enforce the annual report filing requirement against Grasshopper.²

5 The Commission found Grasshopper's second argument to be "equally unpersuasive."³

Grasshopper argues that a person of common intelligence would not understand that an annual report filed with the Commission is expected to be accurate, creating a question of due process before any penalty can be imposed. The statute itself, however, is more than clear: annual reports must be "made out under oath" and contain the requested information. Any reasonable person filing a report "under oath," particularly one completing a formal attestation that the report "is a

² Order 02 ¶¶ 12 and 13.

³ *Id.* ¶ 14.

correct statement of the business and affairs” of the company must recognize that the Commission is seeking true and correct information. If the annual report filing requirement is to have any meaning to people of common intelligence, Grasshopper’s arguments to the contrary must fail.⁴

6 Order 02 concludes:

In sum, Grasshopper voluntarily registered with the Commission as a competitively classified telecommunications company. By doing so, the Company agreed to file timely annual reports with accurate information about intrastate revenues. The Commission’s statute and implementing regulation are clear about the due date and the required contents of such reports, emphasizing the need for accuracy by including a certification form to be signed by a responsible corporate officer. Grasshopper’s motion to dismiss the Commission’s complaint should be denied.⁵

7 **PETITION FOR INTERLOCUTORY REVIEW.** On June 6, 2014, Grasshopper filed its petition for interlocutory review of Order 02. Staff replied on June 11, 2014.

8 Grasshopper’s petition argues first that the Commission lacks jurisdiction over the Company’s interstate services and describes these services in considerable detail. Grasshopper fails to explain how this point is relevant considering its acknowledgement that: “By voluntarily registering with the Commission, Grasshopper took it upon itself to file annual reports and pay the associated regulatory fees.”⁶

9 Staff agrees with the Company’s observation that it voluntarily submitted to the Commission’s jurisdiction and argues it therefore is not necessary for the Commission to resolve in this proceeding any questions concerning the jurisdictional nature of Grasshopper’s services. Staff states in conclusion that:

⁴ Order 02 ¶ 15 (citing Grasshopper Motion, ¶¶ 31-32, *citing Gibson v. City of Auburn*, 748 P.2d 673, 678 (1988)).

⁵ *Id.* ¶ 16.

⁶ Petition for Interlocutory Review ¶ 12.

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.⁷

10 Grasshopper's second argument is that timely but inaccurate annual reports do not violate RCW 80.04.080 and WAC 480-120-382.⁸ However, the Company acknowledges "the importance of accurate reports"⁹ and appears to accept as a contested issue in this case the question "whether an inadvertent error in an otherwise timely report constitutes a violation of the reporting requirements." Clearly Staff, and the Commission in its determination of probable cause, believe the error committed by the Company in this case does amount to such a violation. Grasshopper argues, however, that a "touchstone case" it cites establishes that filing inaccurate annual reports is "not a violation of any statute or rule."¹⁰

11 Staff responds to Grasshopper's second argument by pointing out that the case on which the Company relies was resolved by a settlement among the parties that was approved by the Commission in its Final Order in the docket. Staff states that:

Settlement agreements are not binding precedent. Settlement agreements reflect an agreement entered into by the parties as a compromise to avoid further litigation.¹¹ 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.¹²

⁷ Staff Answer ¶ 7.

⁸ Petition for Interlocutory Review ¶6.

⁹ *Id.* ¶ 14.

¹⁰ *Id.* ¶¶ 18 and 19 (citing *WUTC v. Qwest Corporation*, Docket UT-032162 (2004 WL 315259)).

¹¹ 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."

¹² Staff Answer ¶ 9.

- 12 **DISCUSSION AND DECISION.** Interlocutory review is available at the Commission’s discretion under WAC 480-07-810(2). As relevant here, the rule provides that 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).
- 13 Grasshopper’s jurisdictional argument is misplaced. During all periods relevant to this matter the Company remained subject to the Commission’s jurisdiction to which it voluntarily submitted itself. Given this, the fact that some, or even all, services Grasshopper provides are interstate is simply beside the point, as the Company itself acknowledges.
- 14 The Company’s argument that the *Qwest* case it cites is “binding precedent” is similarly misplaced. A Commission order approving a negotiated settlement among parties is not precedential in any subsequent case.
- 15 The Commission sees no need to address here the Company’s other arguments because they raise only matters that might be pertinent to the question of penalty mitigation. Even were there no material facts in dispute with respect to these questions, which is not the case, they would not be fully dispositive of the issues and, hence support neither a motion to dismiss, nor an order on summary determination.
- 16 The Commission discerns in Grasshopper’s petition no conceivable prejudice to the Company, much less “substantial prejudice.” Even were there the slightest prospect of prejudice in the Commission’s determination in Order 02 denying Grasshopper’s motion to dismiss, it would be remediable in a post-hearing review of the Initial Order that will be entered in this docket. Beyond that, Grasshopper will have the opportunity to seek reconsideration of any Final Order and, finally, judicial review.
- 17 Grasshopper has not even arguably established grounds upon which the Commission might dismiss the Complaint in this case. Moreover, the Company has raised numerous factual assertions that relate principally to the questions of what level of penalty, if any, is appropriate. Considering this, absent settlement of this matter by the parties, there simply is no prospect of avoiding a hearing. That is, there is no

opportunity here to save the Commission or the parties “substantial effort or expense.”

18 Hearing in this matter is set for June 17, 2014, less than one week from today. The parties presumably have largely completed their preparations for hearing. According to Grasshopper’s letter dated June 11, 2014, requesting a continuance until 7 days after the date of this order, the parties have been engaged in settlement discussions for a month, since May 12, 2014. The Complaint has been pending for nearly an additional month, since April 16, 2014. Given Grasshopper’s representation that Staff does not support the Company’s request for a continuance, and the fact that granting it would postpone the hearing of this matter by only 2 business days, the request for continuance is denied. Subject to a proposed resolution of this matter by settlement being filed, or notice from the parties that such a filing is imminent, there is no reason to delay the Commission’s hearing of this case beyond the currently scheduled date of June 17, 2014.

ORDER

19 **THE COMMISSION ORDERS** that Grasshopper’s petition for interlocutory review is denied.

20 **THE COMMISSION ORDERS FURTHER** that Grasshopper’s request for a continuance is denied.

DATED at Olympia, Washington, and effective June 12, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Senior Review Judge