

Exhibit ____ (MMT-RT6)
Docket No. UT-990946
Witness: Mary M. Taylor

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
)	DOCKET NO. UT-990946
)	
1-800 RECONEX, INC.,)	
)	
Respondent.)	
_____)	

REBUTTAL TESTIMONY

OF

MARY M. TAYLOR

STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

April 20, 2001

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 A. First, I plan to make a correction to a line of my testimony that relates to Claim #4. Next, I
3 plan to provide historical background which demonstrates that the company had a clear
4 understanding of the requirements of each of the benchmarks and of the system changes it
5 needed to make to comply with the requirements. This historical information will
6 demonstrate that the company's practices did not meet the tariff and WAC requirements and
7 that contrary to Ms. Elliott's testimony, the company did not pass the September audit and
8 should therefore be ordered to pay the \$45,000 in penalties that were suspended contingent
9 on the outcome of Staff's one year audit. I also intend to address Mr. Braun's testimony
10 which indicates that the Commission should mitigate the \$121,000 penalty for failure to
11 spend the amounts required for system improvements.

12

13 **Q. STARTING WITH THE CORRECTION IN YOUR TESTIMONY, CAN YOU**
14 **PLEASE SPECIFY THE EXACT LOCATION OF THE ERROR IN YOUR**
15 **TESTIMONY, AND WHAT THE ERROR WAS?**

16 A. Yes. On page two of Appendix A in Exhibit MMT-2, the conclusion under Claim #4 should
17 read that the company *failed to meet* the benchmark as opposed to *met* the benchmark. To
18 meet the benchmark addressed under Claim #4, the company could have no more than three
19 violations of WAC 480-120-081(5)(b). Clearly all the findings and discussions under Claim
20 #4 specify that the benchmark was not met, as do Appendices B and C and the audit
21 summary included in Exhibit MMT-3.

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Q. YOUR TESTIMONY INDICATES THE COMPANY FAILED TO MEET SIX OF THE THIRTEEN BENCHMARKS. WAS CLAIM #4 COUNTED AS ONE OF THE SIX MISSED BENCHMARKS YOU REFERRED TO?

A. Yes. I counted Claim #4 as one of the total of six missed benchmarks.

Q. DID MS. ELLIOT ADDRESS YOUR ERROR IN HER TESTIMONY?

A. Not directly. Starting on line 17 of her testimony Sandra Elliott states, “My review of the results of the Compliance Audit clearly indicate *that in the opinion of the WUTC, Reconex failed to meet five of the benchmarks.*”

Q. SO YOU DO NOT AGREE WITH MS. ELLIOTT THAT IT IS YOUR OPINION THAT THE COMPANY ONLY FAILED TO MEET FIVE BENCHMARKS AND NOT SIX?

A. Absolutely not. The only way that Ms. Elliott could have reached this conclusion is if she chose to ignore staff’s conclusions included throughout Exhibit MMT-2, specifically on page 5 of the Compliance audit; the findings and discussion relating to Claim #4 (Page 2 of Appendix A); and the columns dealing with Claim #4 on Appendices B and C.

It is my opinion that the company exceeded six benchmarks and that has been my conclusion since I concluded the September audit.

1 **Q. SO MS. ELLIOTT ACKNOWLEDGES IN HER TESTIMONY THAT THE**
2 **COMPANY EXCEEDED TWO OF THE THIRTEEN BENCHMARKS REVIEWED**
3 **IN THE SEPTEMBER AUDIT?**

4 A. Yes. Starting on line 19, page 6 of her testimony, Ms. Elliott indicates the company failed to
5 meet the benchmark under Claim #2 as a result of six violations of WAC 480-120-081(2)(a).
6 Further, on line 11, page 8 of her testimony Ms. Elliott indicates the company agrees with
7 staff that it exceeded the benchmark for Claim #10.

8
9 **Q. SO WHILE THE COMPANY DOES NOT ACKNOWLEDGE ITS FAILURE TO**
10 **MEET THE BENCHMARK TO WHICH CLAIM #4 RELATES (APPARENTLY IN**
11 **RELIANCE ON THE ERROR IN YOUR TESTIMONY) MS. ELLIOTT ACTIVELY**
12 **DISPUTES YOUR FINDING THAT THE COMPANY EXCEEDED THE THREE**
13 **REMAINING BENCHMARKS SET OUT IN YOUR TESTIMONY. IS THAT**
14 **CORRECT?**

15 A. Yes. Those are the following:
16 Claim #1 - WAC 480-120-081 (2)(a); Allowing less than 15 days for payment of a bill.
17 Claim #8 - RCW 80.36.130 – Billing for service earlier than allowed by tariff. Claim #11 –
18 RCW 80.36.130 – Billing rates other than those authorized in the company’s tariff.

19
20 **Q. DID MS. ELLIOTT PROVIDE ANY INFORMATION IN HER TESTIMONY TO**
21 **SUBSTANTIATE THE COMPANY’S ARGUMENT THAT IT DID NOT EXCEED**
22 **THE BENCHMARKS UNDER CLAIM #1, CLAIM #8 AND CLAIM #11?**

1 A. No. In fact I found the testimony irrelevant and somewhat misleading. Although Ms. Elliott
2 included a copy of the company's tariff (Exhibit SLE-E2), she never addresses the fact that
3 the tariff language sets out specific requirements as to when a reminder can be mailed, how
4 many days a reminder must allow for payment after it is issued, and what is considered a
5 billing date. She also ignores the obvious fact that the company's "business rules" bear little
6 resemblance to the tariff that is on file with the Commission and which the company
7 negotiated with Staff as part of the resolution of the Commission's Complaint against the
8 company in this case.

9
10 Ms. Elliot also fails to provide any information that demonstrates that the company's
11 practices comply with WAC 480-120-081(2)(a), the Commission's rule which is involved in
12 Claim #1. Ms. Elliott simply testifies to the fact that the company is following its "business
13 rules" which she alleges is a benefit to customers.

14
15 **Q. WELL, ISN'T POSSIBLE THAT RECONEX SIMPLY DID NOT UNDERSTAND**
16 **THAT ITS PRACTICES CONSTITUTE VIOLATIONS OF THE COMPANY'S OWN**
17 **TARIFF—AND THEREFORE OF RCW 80.36.130—AS WELL AS OF WAC 480-120-**
18 **081(2)(a) AS OUTLINED IN CLAIMS #1, #8, AND #11?**

19 A. Absolutely not, particularly when one considers the historical background of this case.

20
21 **Q. CAN YOU EXPLAIN WHAT YOU MEAN?**

1 A. Yes. The claims that are presently at issue--providing less than 15 days for payment and
2 billing too far in advance--were already identified as violations during Staff's initial
3 investigation which lead to the issuance of a Complaint in this docket. Staff believed then
4 and continues to believe that consumers were being harmed by these practices. Staff
5 worked extensively with Mr. Bill Braun, Reconex's Counsel, to explain how the company's
6 practices violated the various rules and statutes and to negotiate a tariff that would, if
7 followed by the company, eliminate Staff's concerns. During the development of the
8 settlement agreement we explained in detail the changes in practices and operating systems
9 that would be required to bring the company into compliance. I worked directly with Mr.
10 Braun to develop the company's tariff language, which is now at issue, as well as a welcome
11 letter and Community Action Agency letter.

12
13 **Q. STARTING WITH THE HISTORY OF THE TARIFF LANGUAGE, CAN YOU**
14 **EXPLAIN WHAT WAS REQUIRED IN THE COMMISSION'S SETTLEMENT**
15 **AGREEMENT.**

16 A. The settlement agreement indicated that the company would take the following steps in order
17 to correct the various billing violations: program Washington-specific due dates into their
18 billing system, note Washington accounts so that that it would be clear to representatives that
19 the requirement for Washington consumers was a payment date not less than 15 days from
20 issuance of a bill, and file tariff revisions approved by Staff that would clarify the terms of
21 service for Washington customers.

1 As we worked on the tariff language I made it very clear to Mr. Braun that the company
2 could collect set-up fees and the first month's bill prior to connecting a customer to service.
3 However, should the company chose not to collect one or both of the charges prior to
4 connection of service, the company could not issue a bill or "a reminder notice" for the
5 charges until 15 days from the connection date. If the company did anything other than issue
6 the reminder 15 days after connection it would be in violation of its tariff.

7
8 **Q. WHAT WAS THE PURPOSE OF DELAYING THE FIRST BILL?**

9 A. The 15-day lag ensures that the company will not start disconnection action or disconnect a
10 customer's service during a period for which the customer has already paid. Staff also made
11 it abundantly clear that any reminder notice must state that the customer has, at a minimum,
12 15 days to pay from the date the reminder was issued. Otherwise, the company would be in
13 violation of WAC 480-120-081(2)(a).

14
15 **Q. DID THE TARIFF MODIFICATIONS THAT YOU AND MR. BRAUN**
16 **NEGOTIATED DEAL WITH THE ISSUE OF CUSTOMERS BEING BILLED TOO**
17 **EARLY?**

18 A. Yes, we added specific language which indicates that the day of the month on which a
19 customer's first bill is mailed will be considered that customer's billing date. That means
20 that subsequent bills will be mailed on that date each subsequent month. In other words, if
21 a customer's first bill is issued on February 1, then the next bill should be issued March 1,
22 and so on.

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Q. WHAT WAS THE PURPOSE OF THIS TARIFF LANGUAGE?

A. During our previous investigation, we found that the company did not use regular billing dates on customer accounts. This resulted in the company issuing bills earlier than allowed by their tariff, with the end result that customers were duplicate billed for the same period of time and were sometimes required to make payment months in advance.

Q. YOU MENTION THAT THE SETTLEMENT AGREEMENT REQUIRED TARIFF CHANGES THAT WOULD ADDRESS THE FACT THAT BILLS MUST ALLOW 15 DAYS FOR PAYMENT. IS THAT CORRECT?

A. Yes. The tariff language was modified to indicate that the company’s bills are delinquent 15 days from the date of mailing. This language was consistent with WAC 480-120-081(2)(a) which reads in part, “The telecommunications company shall require that bills for service be paid within a specified time after issuance. The minimum specified time shall be fifteen days.”

Q. DO YOU THINK THE USE OF THE TERM “BILL” IN WAC 480-120-081(2)(a) WHEN COMPARED WITH THE COMPANY’S PREFERRED TERM “REMINDER” COULD HAVE CAUSED CONFUSION ON THE COMPANY’S PART?

A. No. The exhibits to my direct testimony clearly show that Mr. Braun understood that the reminder notice serves as the company’s bill. During our first investigation we determined

1 that the company was sending reminders that purported to allow only 10 days for payment.
2 After discussions with the company, Staff determined that the company's reminder notices
3 served the same function as a bill. As a result of this conclusion, Mr. Braun filed a change in
4 the company's tariff definition so that it would be clear that reminder notices must allow 15
5 days for payment (Exhibit MMT-7).

6
7 **Q. IS THERE ANY DOCUMENTATION OTHER THAN THE TARIFF CHANGES**
8 **THAT WOULD SHOW THAT THE COMPANY HAD A CLEAR**
9 **UNDERSTANDING THAT BILLS MUST ALLOW 15 DAYS FOR PAYMENT OR**
10 **THAT THE FIRST BILL COULD NOT BE ISSUED UNTIL 15 DAYS FROM THE**
11 **DATE OF CONNECTION?**

12 A. Yes, this position is reiterated in an e-mail (Exhibit MMT-8) exchange between Mr. Braun
13 and myself. The procedure is also clearly spelled out in the Welcome letter Mr. Braun and I
14 developed (Exhibit MMT-9).

15
16 **Q. BASED ON WHAT YOU HAVE JUST DISCUSSED, DO YOU BELIEVE THAT**
17 **THERE IS ANY WAY THE COMPANY COULD HAVE BEEN CONFUSED**
18 **ABOUT THE COMPLIANCE REQUIREMENTS UNDER CLAIM #1 AND #8?**

19 A. No.

20
21 **Q. STARTING ON PAGE 4 OF HER TESTIMONY MS. ELLIOTT DISPUTES STAFF'S**
22 **FINDING THAT THE COMPANY VIOLATED WAC 480-120-081(2)(a) UNDER**

1 **CLAIM #1, THEREFORE EXCEEDING THE BENCHMARK SET OUT BY**
2 **COMMISSION ORDER. DO YOU AGREE WITH HER CONCLUSION?**

3 A. No. Starting on line 13, page 5, of her testimony, Ms. Elliott argues that the company is in
4 compliance if you add the five to seven days a customer waits for service to be connected to
5 the ten days reflected on the reminder notice the day it is mailed because the total is then 15
6 days.

7
8 The rule clearly keys on the date a bill is issued, and requires that the minimum time for
9 payment is 15 days from that date. Ms. Elliott acknowledges that the reminder is issued the
10 day a customer is connected and reflects only a 10 days due date. The tariff changes and the
11 other documentation clearly show that the company understood the rule requirements but has
12 apparently decided not to comply with them.

13
14 **Q. DO YOU CONTINUE TO BELIEVE THAT THE COMPANY FAILED TO MEET**
15 **THE BENCHMARK UNDER CLAIM #1?**

16 A. Yes, and Appendices B, C, and D of the audit (Exhibit MMT-2) show that this rule violation
17 occurred at least once in all 50 customer accounts I audited.

18
19 **Q. ON PAGE 7 OF HER TESTIMONY, MS. ELLIOTT INDICATES EACH OF THE**
20 **VIOLATIONS LISTED UNDER CLAIM #8 FOR BILLING A CUSTOMER**
21 **SOONER THAN ALLOWED BY RECONEX'S TARIFF ARE IDENTICAL TO THE**
22 **ALLEGED VIOLATIONS UNDER CLAIM #1. STARTING ON LINE 15, SHE**

1 **INDICATES THAT THE ALTERNATIVE PAYMENT ARRANGEMENT DOES**
2 **NOT VIOLATE RCW 80.36.130, THEREFORE THE COMPANY DID NOT**
3 **EXCEED THE BENCHMARK. DO YOU AGREE WITH THIS ASSESSMENT?**

4 A. No. Claim #8 deals with customers being billed too early. Claim #1 deals with customers
5 not being allowed 15 days to pay their bills once they are issued.

6
7 **Q. SO WHAT DID THE COMPANY DO THAT VIOLATED ITS TARIFF AS SET OUT**
8 **UNDER CLAIM #8?**

9 A. There are really too things. First, the tariff indicates that bills should be issued monthly on a
10 customer's billing date, which is established the date their first bill is mailed. As I mentioned
11 above, Staff negotiated for the inclusion of this language in the tariff to resolve an issue that
12 was identified in our prior investigation, specifically, that the company was generating
13 multiple bills during a given month, demanding payment, and disconnecting if the customer
14 did not make payment. In many cases the customer had paid months in advance when they
15 were disconnected.

16
17 **Q. WHAT IS THE SECOND TARIFF VIOLATION ADDRESSED IN CLAIM #8 OF**
18 **YOUR AUDIT?**

19 A. The company issued initial bills on the date of connection as opposed to waiting 15 days as
20 required by tariff. Again, Staff negotiated to add language to the company's tariff that
21 required the company to wait 15 days because there were a number of cases we identified in
22 the previous investigation where the company either threatened to disconnect or actually

1 disconnected customers whose accounts were not delinquent--in other words, the customers
2 had not exhausted the prepaid period. Waiting 15 days ensures that a customer has
3 exhausted his or her prepaid service at the time a company initiates disconnection action.

4
5 **Q. CAN YOU PROVIDE EXAMPLES FROM YOUR AUDIT OF HOW THE**
6 **COMPANY'S PRACTICES RESULTED IN A CUSTOMER BEING BILLED TOO**
7 **EARLY?**

8 A. Yes. Look at the examples provided in Exhibit MMT-10. The first example reflects the
9 account of a customer who paid the set-up fee before connection of service took place on
10 January 11. The second example reflects a customer's account where both the set-up fee and
11 the first month's service were paid prior to connection on January 7. The first column on
12 each example indicates the period of time the billing would have covered. The second and
13 third column indicate the date that Reconex actually mailed the customers reminder notices
14 (bills) and the due date reflected on the notices. The fourth and fifth columns indicate the
15 date the reminder should have been sent to the customer and the due date each should have
16 reflected. The sixth column reflects the number of days the company required the customer
17 to make payment before the date that was allowed under the tariff.

18
19 I will use example #2 to illustrate why staff required the 15-day lag since it easily illustrates
20 all of our concerns. This is not an isolated example. As Appendices B, C, and D of the audit
21 (Exhibit MMT-2) show, the same problem was found in all fifty customer accounts I audited.

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The customer paid one month’s service in advance. In other words, when service was connected they paid a service fee that covered the period from January 7 through February 6.

The company sent the customer a reminder with a due date of January 17. If the customer had failed to make another payment by January 17, the company records would indicate that a disconnect notice could be sent to the customer on January 18. The due date of the disconnect notice would be eight business days, or January 28. If payment were not made by January 28 the company records would indicate that the customer’s service was subject to disconnection on January 29, even though the customer had prepaid for service through February 6.

Q. CAN YOU SHOW HOW THE 15-DAY LAG PREVENTS A CUSTOMER FROM BEING DISCONNECTED DURING A PREPAID PERIOD?

A. Using the same customer account as an example, the customer prepaid for service through February 6. Had Reconex followed the tariff, the first bill would have gone out on January 26, carrying a due date of February 6. If you look at the period each bill would cover in the first column and compare it to the fifth column, you will see that the due dates of this customer’s bills should have fallen either on the first day of, or just into the period the prepayment covers. In other words, under the tariff, the due date for payment should coincide with the beginning of the customer’s one month prepaid period. If a customer is required to prepay for service, that customer should pay in advance for only one month’s service, and should use up that month of service before being required to prepay for the next

1 month's service.

2
3 **Q. CAN YOU EXPLAIN IN MORE DETAIL HOW THE BILLING CYCLES**
4 **DEICTATED BY THE TARIFF ENSURE THAT A CUSTOMER IS ONLY BILLED**
5 **FOR ONE MONTH OF SERVICE IN ADVANCE.**

6 A. Yes. Looking at the first column and the fifth, this time using example #1, you will notice
7 that the January 26 bill, due February 10, covers service from January 11 through March 10.
8 The February 26 bill, due March 12, covers service from March 11, through April 10. So
9 under the tariff, the customer never pays more than one month's service in advance.

10
11 Now contrast this with Reconex's actual procedure for the same example. The first bill is
12 generated on January 11, due January 21, covering service from January 11 through February
13 10. Then, nine days later, on January 20, the company issued a bill due on February 4,
14 covering service from February 11 through March 10. So the customer is being asked to pay
15 for service for a month and six days starting with the second bill. If you look at the same
16 situation in example #2, when a customer pays the first month's charges prior to connection,
17 the disparity increases.

18
19 In example #2, the customer has prepaid for service from January 7 through February 6 at the
20 time of connection. On the day of connection, the company issues the first bill, due on
21 January 17, covering service from February 7 through March 7. The company then issues
22 another bill on January 20, which is due on February 3, covering service from March 7

1 through April 6. In this case, by the January 20 bill, the company is issuing a bill more than
2 two months in advance, and this pattern continues throughout the life of the account.

3
4 **Q. PREVIOUSLY YOU MENTIONED THAT YOU FELT MS. ELLIOTT'S**
5 **TESTIMONY WAS MISLEADING WHEN SHE INDICATES THAT RECONEX'S**
6 **BUSINESS PRACTICE TO ALLOW A CUSTOMER TO PAY THE CONNECTION**
7 **FEE AND THEN BE BILLED 10 DAYS AFTER CONNECTION WAS TO A**
8 **CUSTOMER'S BENEFIT. CAN YOU EXPLAIN WHAT YOU MEAN?**

9 A. Yes. Look at example #1 in Exhibit MMT-10. Reconex issued a reminder notice on January
10 11, for the first month's service which reflected a due date of January 21. Theoretically, if
11 the consumer did not make this payment by January 21, the company could mail an eight-day
12 disconnect notice on January 22, making the customer service subject to disconnection on
13 February 3.

14
15 Had the customer been billed properly as provided for in the tariff and the rule requiring 15
16 days from issuance to pay a bill, the first bill would have been mailed January 26, due on
17 February 10. If the customer failed to make payment by February 10, following proper
18 notice, the customer's service would be subject to disconnection on February 23. So the
19 effect the of the company's practice results in a demand for payment and/or subjects an
20 individual to disconnection 20 days earlier than allowed by tariff and rule. I do not see this
21 as a benefit to the customer.

1 More importantly, it's a clear violation of the tariff that I negotiated with the company in
2 resolution of the Commission's complaint to prevent this very practice. If you look at
3 example #2, you will see that the net result of the company's practice is to demand payment
4 of the first month's charges 24 days earlier than allowed by tariff and rule.
5

6 **Q. THE LAST BENCHMARK THAT MS. ELLIOTT ADDRESSES IN HER**
7 **TESTIMONY IS CLAIM #11 DEALING WITH FCC ACCESS AND PICC**
8 **CHARGES. MS. ELLIOTT TESTIFIES THAT THE COMPANY DID NOT FAIL TO**
9 **MEET THE BENCHMARK UNDER THIS CLAIM BECAUSE ALTHOUGH THE**
10 **COMPANY DID NOT BILL THE RATES SPECIFIED IN THE TARIFF, THE**
11 **RATES IT BILLED ITS CUSTOMERS WERE PROPER FCC RATES. DO YOU**
12 **AGREE?**

13 **A.** No. RCW 80.36.130 is specific. A company must charges rates in accordance with its tariff.
14 At the time in question, the approved rate in the company's tariff for the FCC access charge
15 was \$3.50. The approved rate for the PICC charge was \$1.04. Ms. Elliott is correct that the
16 FCC rates changed in July 2000. However, Ms. Elliott's assumption that the tariff violation
17 did not occur simply because the company was billing a rate authorized by the FCC is
18 incorrect. This response does not address the requirement of the statute. Clearly to avoid
19 violating the statute, the company should have updated it tariff to reflect the new rates at the
20 same time it updated it's billing system.
21

22 **Q. YOU INDICATE THAT YOU WANTED TO ADDRESS MR. BRAUN'S**

1 **TESTIMONY RELATING TO SYSTEM IMPROVEMENTS AND PAYMENT OF**
2 **\$121,000 SUSPENDED AS A RESULT OF THE SETTLEMENT. IS THAT**
3 **CORRECT?**

4 A. Yes.

5
6 **Q. DID MR. BRAUN'S TESTIMONY PROVIDE ANY ADDITIONAL INFORMATION**
7 **OR PROOF THAT WOULD CHANGE THE RECOMMENDATION YOU MADE IN**
8 **YOUR DIRECT TESTIMONY?**

9 A. No. Mr. Braun simply indicates that Reconex made a good faith effort to spent the money
10 they agreed to in the settlement agreement but that budgetary constraints, a change in
11 ownership, and the simple fact that Reconex ran out of time before the September audit
12 contributed to the company's failure to comply with the order. I find the company's
13 arguments unpersuasive.

14
15 Mr. Braun himself signed the settlement agreement and therefore knew from the beginning
16 the deadline for expenditures was by the time of the September audit. I had almost monthly
17 contact with Mr. Braun. It was always clear to Mr. Braun that the company would become
18 liable if the money had not been spent by the time of the September audit--with no
19 exceptions. As you can see by the e-mail dated June 28, (Exhibit MMT-11) Mr. Braun
20 acknowledged this requirement. Likewise, in the e-mail dated August 30, Mr. Braun
21 continued to discuss the capital infusion needed to comply.

1 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

2 A. Yes

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