

1  EXPEDITE

2  Hearing is set:

3 Date: October 28, 2005

4 Time: 1:30 PM

5 Judge/Calendar: Hon. Judge Paula Casey

6  
7  
8  
9  
10 STATE OF WASHINGTON  
11 THURSTON COUNTY SUPERIOR COURT

12  
13 TEL WEST COMMUNICATIONS LLC,  
14 Petitioner,

15 v.

16 WASHINGTON UTILITIES AND  
17 TRANSPORTATION COMMISSION,  
18 Respondent.

NO. 05-2-00296-1

**SETTLEMENT AGREEMENT**

19  
20 Both parties to this proceeding, as defined below, enter into the following agreement to  
21 resolve all issues presented in the above-captioned case.

22 **I. PARTIES**

23 1.1 The parties to this settlement agreement are the petitioner, Tel West  
24 Communications LLC (Tel West), and the respondent, State of Washington, Washington  
25  
26

1 Utilities and Transportation Commission (Commission), collectively referred to as “the  
2 Parties.”

## 3 4 II. BACKGROUND

5 2.1 On June 23, 2004, the Commission issued a Notice of Penalties Incurred and  
6 Due for Violations of Laws, Rules, and Regulations (Notice of Penalties) against Tel West.  
7 AR 33-38. Penalties totaling \$143,100.00 were assessed for asserted violations of WAC 480-  
8 120-166 and WAC 480-120-147(5). The Notice of Penalties alleged 397 violations of WAC  
9 480-120-166 and 1,034 violations of WAC 480-120-147(5).

10 2.2 On July 4, 2004, the Commission received an application for mitigation from  
11 Tel West. AR 40-74. Commission Staff<sup>1</sup> responded to the application for mitigation on  
12 August 4, 2005. AR 85-313. The Commission held a brief adjudicative proceeding (BAP) to  
13 hear oral argument from the parties. AR 318-324, 329-331.

14 2.3 After adjudication, the Commission entered an order granting, in part, Tel  
15 West’s application for mitigation. AR 332-348. Due to certain errors in the order, the  
16 Commission entered a revised order on January 10, 2005. AR 386-402. The Commission  
17 mitigated the WAC 480-120-166 penalties by \$500.00 and the WAC 480-120-147(5) penalties  
18 by 50 percent for total penalties of \$90,900.00.

19 2.4 On February 9, 2005, Tel West filed with the Thurston County Superior Court a  
20 petition for review of the Commission’s final order. Oral argument scheduled for August 19,  
21  
22  
23  
24

---

25 <sup>1</sup> In adjudications before the Commission, the Commission’s Regulatory Staff (Commission Staff or  
26 Staff) appears as an independent party with the same privileges, rights, and responsibilities as any other party in  
the proceeding. Commission Staff is subject to *ex parte* provisions, which separates the Commissioners, the  
presiding ALJ, and the Commissioners’ advisors from all parties. RCW 34.05.455; WAC 480-07-340.

1 2005, was rescheduled to October 28, 2005, to allow the Parties to engage in settlement  
2 negotiations. This settlement agreement is the product of those negotiations.

### 3 III. AGREEMENT

4 3.1 The Parties have reached a voluntary agreement on the issues in the above-  
5 captioned case without Superior Court hearing or adjudication of any issues of fact or law to  
6 avoid expense, inconvenience, delay, and uncertainty of litigation.

7 3.2 The Parties agree that total penalties of \$90,900.00 will be assessed against Tel  
8 West for violations of WAC 480-120-166 and WAC 480-120-147(5). The Parties agree that  
9 Tel West will pay \$25,000.00 to the Commission for deposit into the public service revolving  
10 fund. Payment will be due within 15 days of execution of this settlement agreement. Upon  
11 payment of the \$25,000.00, the Parties will file a motion with Thurston County Superior Court  
12 to dismiss the above-captioned proceeding.

13 3.3 The Parties agree that the remaining penalties of \$65,900.00 will be suspended  
14 contingent upon Tel West's compliance with the terms of this settlement agreement. The  
15 suspended penalty will become due upon violation of the terms of this settlement agreement.

16 3.4 The Parties agree that Tel West will comply with the requirements of WAC  
17 480-120-147(5) in establishing preferred carrier freezes on customer accounts. The Parties  
18 agree that Tel West will report quarterly the total number of new preferred carrier freezes  
19 placed on customer accounts during each month of the quarter. The Parties agree that Tel  
20 West will provide to the Commission each for each quarter of the enforcement period a  
21 random sampling of the third party verification recordings or other verification method used to  
22 verify a customer's authorization of a preferred carrier freeze in accordance with WAC 480-  
23  
24  
25  
26

1 120-147(1) and (2). Tel West will provide a random sampling of 10 percent of the  
2 verifications conducted during each month of the quarter. Tel West shall provide such report  
3 and verification documentation by the 15<sup>th</sup> day following the month end of the quarter. The  
4 first quarter for which Tel West will provide a report begins on October 1, 2005. If Tel West  
5 uses a third party verifier, Tel West will provide the recordings as a .wav file on compact discs.  
6 Violation of this settlement agreement occurs if the verification documentation establishes that  
7 any preferred carrier freeze placed on a customer's account was not properly verified or  
8 authorized.  
9

10 3.5 The Parties agree that Tel West will provide timely responses with regard to  
11 Commission-referred complaints in accordance with WAC 480-120-166. Violation of this  
12 settlement agreement occurs if Tel West provides late responses to more than three requests for  
13 information during one month. The Parties agree that the Commission Staff will provide Tel  
14 West with notice by electronic mail of the first three late responses within two business days of  
15 each late response. Such notice will be made to:  
16

17 Jeff Swickard  
18 Tel West President  
19 JSwickard@telwestservices.com

20 If the above contact information changes, Tel West will inform the Commission within one  
21 business day of the new contact information.

22 3.6 The Parties agree that the enforcement period will be 24 months from the date  
23 this settlement agreement is executed.  
24  
25  
26

1           3.7     In the event there is any alleged violation of this settlement agreement, the  
2 alleged violation will be reported to the Commission by its Staff, and the Commission may  
3 determine to seek enforcement of the settlement agreement.  
4

5           3.8     In the event that the Commission issues a press statement regarding this  
6 settlement agreement, the Parties agree that the Commission will provide a copy of the  
7 statement to Tel West one business day prior to its release.

8                                   **IV.    GENERAL PROVISIONS**

9           4.1     This settlement agreement does not preclude the Commission from pursuing  
10 penalties for violations of Commission rules and statutes unrelated to the subject matter of this  
11 agreement or for subsequent violations of the rules or statutes stated above.  
12

13           4.2     Nothing in this settlement agreement shall limit or bar a party's ability to pursue  
14 legal enforcement of the terms of the agreement in Superior Court. Should legal enforcement  
15 be necessary, the party against whom action is taken will be liable for costs to the moving  
16 party, if such action is successful.

17           4.3     The Parties recognize that this settlement agreement represents a compromise of  
18 the positions the Parties may otherwise assert in this proceeding. As such, conduct, statements,  
19 and documents disclosed during negotiations of this settlement agreement shall not be  
20 admissible as evidence in this or any other proceeding, except in any proceeding to enforce the  
21 terms of the settlement agreement.  
22

23           4.4     This settlement agreement shall not be construed against either party because it  
24 was a drafter of the agreement.  
25  
26

1           4.5     The Parties have negotiated this settlement agreement as an integrated  
2 document to be effective upon execution. This settlement agreement supersedes all prior oral  
3 and written agreements on issues addressed herein.

4           4.6     The Parties may execute this settlement agreement in counterparts and as  
5 executed shall constitute one agreement. Copies sent by facsimile are effective as original  
6 documents.

7           4.7     The Parties shall take all actions necessary and appropriate to carry out this  
8 settlement agreement.

9           4.8     Upon execution of this settlement agreement, attorneys for the Parties will draft  
10 a Motion to Dismiss and Stipulated Order and Judgment of Dismissal to be filed with Thurston  
11 County Superior Court. Upon payment of the penalties agreed upon in Paragraph 3.2 above,  
12 the Parties will file the Motion to Dismiss and Stipulated Order and Judgment of Dismissal.  
13 The Parties will request that jurisdiction be retained by the Court over this matter for the  
14 purpose of enabling either party to this settlement agreement, with or without the prior consent  
15

16 //  
17 //  
18 //  
19 //  
20 //  
21 //  
22 //  
23 //

1 or approval of the other party, to apply to the Court at any time for the enforcement of  
2 compliance therewith, the punishment of violations thereof, or the modification or clarification  
3 thereof.  
4

5  
6 TEL WEST COMMUNICATIONS LLC

ROB MCKENNA  
Attorney General

7   
8

9  
10 RAMSEY RAMERMAN  
11 Foster Pepper Schefelman  
12 WSBA No. 30423  
13 Attorney for Tel West Communications  
14 (206) 447-4674

15  
16 LISA W. GAFKEN  
17 Assistant Attorney General  
18 WSBA No. 31549  
19 Attorney for the Washington Utilities  
20 and Transportation Commission  
21 (360) 664-1186  
22  
23  
24  
25  
26