

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

ELLENSBURG TELEPHONE  
COMPANY d/b/a FAIRPOINT  
COMMUNICATIONS

Requesting distribution of funds from the  
state universal communications services  
program created in RCW 80.36.650

DOCKET UT-151600

ORDER 01

ORDER DENYING PETITION

**BACKGROUND**

1 On May 22, 2014, the Washington Utilities and Transportation Commission (Commission) issued General Order R-575 in Docket UT-131239 amending and adopting rules in Washington Administrative Code (WAC) 480-123 to implement the state universal communications service program (State USF Program) established by the legislature.<sup>1</sup> The State USF Program addresses two concerns. The first is the temporary replacement support for the universal service support pool (Traditional USF), which was eliminated on July 1, 2014. The second is replacing the annualized cumulative reduction in support the company received from the federal Connect America Fund Inter-carrier Compensation (CAF-ICC) up through and including the year for which program support is distributed.<sup>2</sup>

2 A company is eligible to receive distributions from the State USF Program if it can demonstrate that absent such additional funding, its customers are at risk of rate instability, service interruptions, or cessations. An eligible company will receive a distribution not to exceed the sum of the amount the company received from the

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<sup>1</sup> RCW 80.36.650, *et seq.* establishes a state universal communications services program to support small incumbent telephone companies serving high-cost rural areas of Washington. This program is a transitional program that partially offsets reductions of the small companies' intrastate terminating access revenues implemented by the Federal Communications Commission (FCC) in its order FCC 11-161. The program makes available an annual fund of up to \$5 million to provide distributions to qualifying companies and is scheduled to terminate after five years.

<sup>2</sup> WAC 480-123-120(2).

Traditional USF for 2012 and the cumulative reduction in support the company received from the federal CAF.

3 On July 31, 2015, Ellensburg Telephone Company d/b/a FairPoint Communications (Ellensburg or Company) filed a petition to receive support from the State USF Program (Petition) for the fiscal year ending June 30, 2016.

4 Staff reviewed the Company's Petition, including related work papers, and has determined that the Company does not meet the requirements of WAC 480-123-120, which defines the factors the Commission will use to determine if a provider has demonstrated that its customers are at risk of rate instability, service interruptions, or cessations.<sup>3</sup>

5 Staff reviewed the financial results included with the Petition and found that the Company's Washington 2014 total regulated operations rate of return (ROR) exceeded 21 percent. Staff used a total Washington-earned rate of return (ROR) of 10 percent as a threshold to assess the petitioning companies' relative earning levels for the purpose of evaluating their eligibility for State USF Program funds. In cases like this, where a company's ROR is greater than 10 percent, Staff also considered the other eligibility factors.

6 Staff reviewed the consolidated return on equity and debt obligations of the parent company, FairPoint Communications (FairPoint). FairPoint's consolidated total long-term debt was \$908 million at the end of 2014.<sup>4</sup> FairPoint's total stockholders' equity at the end of 2014 had a deficit balance, resulting in a negative consolidated return on equity of all business units, both regulated and non-regulated.<sup>5</sup>

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<sup>3</sup> Pursuant to WAC 480-123-120(1), the Commission will consider the provider's earned rate of return on a total Washington company books and unseparated regulated operations basis, the provider's return on equity, the status of the provider's existing debt obligations, and other relevant factors including, but not limited to, the extent to which the provider is planning or implementing operational efficiencies and business plan modifications to transition or expand from primary provision of legacy voice telephone service to broadband service or otherwise reduce its reliance on support from the program.

<sup>4</sup> FairPoint Communications Inc., and Subsidiaries Consolidated Balance Sheet per the 2014 10-K Annual Report, pages 62 - 64. Ellensburg Telephone does not have any long term debt on its balance sheet.

<sup>5</sup> FairPoint Communications Quarterly 10-Q report for the period ended June 30, 2015, reported a positive total stockholders' equity balance resulting from the elimination of post-employment healthcare benefits for active employees effective August 28, 2014 and termination of the plan

- 7 Staff also considered recently-implemented operating efficiencies and business plan modifications meant to transition the Company from voice telephone to broadband service. The Company began this transition with the use of 2014 State USF Program funds for the launch of VoIP services. In addition, Ellensburg accepted CAF-II funds in August 2015 totaling approximately \$6.4 million over six years, which will be used to provide broadband service to over 2,300 supported residential and business customers. The acceptance of CAF-II funds will gradually replace the current frozen high-cost support received and eventually reduce the Company's overall annual federal support revenue by approximately \$500,000 after a four-year transition period.
- 8 Although Staff found that the Company is transitioning from voice service to broadband service as demonstrated by its launch of VoIP services and acceptance of federal CAF-II funds, Staff cannot overlook an ROR of 21 percent in 2014 and 2013 which exceeded 10 percent.
- 9 Based on its analysis of all relevant information, Staff finds that Ellensburg's customers are not at risk of rate instability, or service interruptions or cessations, and that the Company has not demonstrated a need for distribution from the State USF Program fund.

### **DISCUSSION**

- 10 We agree with Staff that the Company has not demonstrated its eligibility for a distribution from the State USF Program for fiscal year ending 2016. The Company's ROR of 21 percent is well above Staff's 10 percent threshold. Moreover, no other factors are present to demonstrate that the Company's customers are at risk of rate instability, service interruptions, or service cessations. Accordingly, we deny Ellensburg's Petition.

### **FINDINGS AND CONCLUSIONS**

- 11 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate public service companies.
- 12 (2) Ellensburg is a local exchange company as defined in WAC 480-120-021 and a public service company subject to Commission jurisdiction.

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effective January 1, 2015. This reduced the benefit obligation and a corresponding prior service credit of \$619.4 million recognized in accumulated other comprehensive income, pages 18 – 19.

- 13 (3) Ellensburg has not demonstrated that its total operations rate of return and its consolidated return on equity of combined operations, both regulated and non-regulated, are not excessive.
- 14 (4) Ellensburg has not demonstrated that its earned rate of return on regulated operations and rate of consolidated return on equity are both at levels that demonstrate a risk of rate instability or service cessation.
- 15 (5) Ellensburg is not eligible to receive funding from the State USF Program.

**ORDER**

**THE COMMISSION ORDERS:**

- 16 (1) Ellensburg Telephone Company d/b/a FairPoint Communications' request for funds from the State USF Program for fiscal year ending June 30, 2016 is denied.
- 17 (2) The Commission retains jurisdiction over this matter for purposes of effectuating this order.

DATED at Olympia, Washington and effective November 13, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner