

Date Received: July 9, 2004

Docket No.: UT-040572

Company: Tel West Communications, LLC

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July 9, 2004

JOYCE G. MORGAN
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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

Hand Delivered

Ms. Carole Washburn
Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Dr. S.W.
Olympia, WA 98504

**Re: In the Matter of Tel West Communications, LLC
Docket No. UT-040572**

Dear Ms. Washburn:

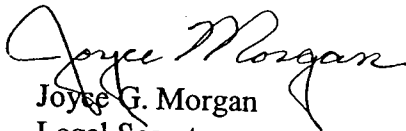
Enclosed for filing please find the original and 20 copies of the following document in the above-referenced matter:

- Application for Mitigation of Penalties

Please date-stamp and return to us in the enclosed envelope a copy of the filing for our records. If you have any questions, please call me at (206) 340-9381

Very truly yours,

GRAHAM & DUNN PC


Joyce G. Morgan
Legal Secretary

Enclosures
m30208-516869.doc

COPY

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of,

TEL WEST COMMUNICATIONS, LLC

) No. UT-040572

) APPLICATION FOR
) MITIGATION OF PENALTIES

I. SUMMARY

Tel West Communications, LLC ("Tel West") applies to the Washington Utilities and Transportation Commission ("Commission") for a substantial reduction of the penalties ("Penalties") assessed against Tel West in this matter for the following reasons:

A. Tel West did not violate the "authorization" regulations as asserted by Staff. The Commission's staff ("Staff"), while attempting in good faith to assist Tel West, repeatedly asserted that Tel West had failed to receive customers' *authorization* to implement a line freeze. Staff were wrong. In fact, Tel West actually received customers' authorization to implement the line freeze. In retrospect, Tel West now understands that Staff should have referred to the third party *verification* process, and not the authorization process. Since Staff did not accurately cite violations of the line freeze verification rule, the Commission cannot assess penalties against Tel West for a violation of the line freeze verification rule.

1 B. Staff Alleged Far Fewer Violations. According to communications from Staff, the
2 number of alleged violations for untimely responses must be significantly reduced.

3 C. Commission's Legal Standard for Penalties. The Commission should
4 substantially reduce the Penalties because, under the Commission's legal standards for the
5 assessment of penalties, they are clearly excessive. The three missing words from Tel West's
6 third party verification ("TPV") script: "Is this okay?" simply do not warrant a \$103,400
7 penalty.

8 D. The Penalties Violate the "Excessive Fine Clause" of the Eighth Amendment.
9 The Penalties violate the Excessive Fines Clause of the Eighth Amendment to the
10 U.S. Constitution because they are grossly disproportional to the nature of Tel West's conduct.

11 II. FACTS

12 Tel West is a facilities based competitive local exchange carrier. In 2003, Tel West
13 decided to enter into the facilities-based competitive local exchange service line of business in
14 Washington state, focusing on residential and small business customers. Tel West launched a
15 telemarketing campaign to attract new residential and small business customers. *Declaration of*
16 *Jeff Swickard.*

17 Tel West retained a telemarketing firm and a third party verification ("TPV") firm to
18 assist with the marketing campaign. The sales script included Tel West's disclosure to the
19 potential customer that a line freeze would be implemented with Tel West's service, and that
20 their authorization to place the line freeze would be confirmed by a third party verification
21 service. If any customer indicated that they did not want the line freeze on their account—either
22 during the sales authorization process or during the verification process—the line freeze was not
23 placed on the customer's account. Tel West proactively offered to place a line freeze on
24 customers' accounts because some of Tel West's customers had been slammed by other
25 telecommunications carriers. *Declaration of Kerry Myers.*

1 The TPV firm recommended certain language for Tel West's verification script, and
2 Tel West accepted the TPV firm's recommendation. During the telemarketing campaign,
3 Tel West used four scripts (but only one script at any given time) to confirm customers'
4 authorization to switch their telecommunications services to Tel West. Since December 2, 2003,
5 all of the TPV scripts expressly mentioned the line freeze. Until February 25, 2004, the TPV
6 script simply did not ask the customer "Is this okay?" after expressly mentioning the line freeze.
7 *Declaration of Kerry Myers.* With the addition of the three words "Is this okay?", Tel West's
8 TPV scripts were in compliance with the Commission's rules.

9 Tel West's rapid growth required it to undertake several critical initiatives
10 simultaneously. The initiatives included designing, constructing and deploying a facilities-based
11 network (including installing a Class 5 local switch, installing collocation facilities in 5 central
12 offices in Washington state, and renegotiating interconnection agreements); selecting and
13 implementing a new billing and customer management software system; and managing rapid
14 customer growth due to the success of the marketing strategy. *Declaration of Jeff Swickard.*

15 During the course of the telemarketing campaign, Tel West received inquiries from Staff
16 which asserted that Tel West did not have the customers' authorization to implement a line
17 freeze. Tel West's managers were confused by Staff's comments because they knew that
18 Tel West did receive the customers' authorization to implement the line freeze during the sales
19 authorization process. In addition, due to the successful growth of Tel West's business, Tel West
20 inadvertently failed to respond to some of Staff's inquiries in a timely manner. *Declarations of*
21 *Chris Sturgul and Mat Myers.* On May 1, 2004, Tel West hired a full time regulatory manager,
22 Donald Taylor, who now has sole responsibility for receiving and responding to inquiries from
23 Staff. Tel West has responded in a timely manner to all of the Staff's inquiries since
24 Mr. Taylor's assumed sole responsibility for responding to Staff's inquiries in mid-April 2004.
25 *Declaration of Donald Taylor.* Staff has not asserted that Tel West committed any fraud,
26 slamming or cramming arising out of the line freeze verification process, and Staff is not

1 asserting that Tel West owes any refunds or credits as a result of the third party verification
2 process. *Declaration of Donald Taylor.*

3 4 III. ARGUMENT

5 A. **Tel West did not violate the “authorization” regulations as asserted by Staff, and**
6 **the Commission may not now assess Penalties for the line freeze.**

7 The Federal Communications Commission’s (“FCC’s”) rules and the Commission’s rules
8 allow a two step process when a customer switches from one telecommunications carrier to
9 another: (1) the sales *authorization* process which is conducted by the carrier or its sales agent,
10 and (2) the subsequent *verification* process conducted by a third party which is wholly
11 independent from the carrier. (47 CFR §64.1190; WAC 480-120-147.) The third party
12 verification (“TPV”) process can never take place during the sales authorization process, and
13 likewise, the sales authorization process may never take place during the TPV process.

14 The [TPV] script should not mirror any carrier’s particular marketing pitch, nor
15 should it market the carrier’s services. Instead, it should clearly verify the
16 subscriber’s decision to change carriers.

17 *Implementation of Subscriber Carrier Selection Changes, Second Report and*
18 *Order and Further Notice of Proposed Rulemaking, FCC Order No. 98-334; FCC*
19 *CC Docket No. 94-129, December 23, 1998, at ¶72.)*

20 Therefore, under the FCC’s rules, “authorization” always refers to the sales process when a
21 customer grants his or her consent to switch their telecommunications service to another carrier,
22 and “verification” always refers to the TPV process. The Commission’s TPV and line freeze
23 rules are substantially the same as the FCC’s rules.

24 Staff asserted on numerous occasions that Tel West did not receive customers’
25 *authorization* for a line freeze. According to the Staff Report¹ in this matter, Staff sent the
26 following communications to Tel West:

¹ Staff provided Tel West with a Revised Draft of the Staff Report on June 2, 2004. All references to the Staff Report refer to the copy provided to Tel West on June 2, 2004.

<u>COMPLAINT NUMBER</u>	<u>TEXT OF STAFF E-MAIL</u>	<u>CONDUCT CITED: AUTHORIZATION OR VERIFICATION?</u>
85015	"... freeze may not be added. . . without an order from the customer."	Authorization
84496	"The LEC must obtain separate authorization. . ."	Authorization
84532	Quoted rule.	Reason not specified in Staff Report
86385	"Company could not produce verification documentation for local freeze."	Verification
86836	"... failure to get the proper authorization for the PIC freeze."	Authorization
86904	"... failure to document the authorization for the PIC Freeze."	Verification
87032	"... failed to properly confirm the consumer's authorization for the preferred carrier freeze."	Verification
84971	"... express consent must be given by the customer."	Authorization
87487	"... unable to provide a TPV authorizing the local carrier freeze. . . ."	Authorization
87474	"... failure to obtain consumer consent to place freeze."	Authorization
87687	"... failed to get proper authorization for the local exchange freeze. . ."	Authorization
87717	"... failed to get proper authorization for the local exchange freeze. . . ."	Authorization
87418	"... failure to get specific authorization for the PIC line freeze. . . ."	Authorization
87667	"... must obtain separate authorization for each service. . . ."	Authorization
87696	"Everything about the TPV was proper with the exception of the procedure for implementing the local freeze."	Verification. <i>Tel West revised the verification script to include "Is this okay?" the day after this email message was sent by Staff.</i>

1 Virtually all of the communications from Staff to Tel West concerning line freezes
 2 alleged that Tel West had failed to receive the customers' *authorization*. In addition, even the
 3 Staff Report confuses the two concepts; the Staff Report asserts 9 times that Tel West failed to
 4 receive customers' "authorization", but mentions the "verification" process only 3 times.
 5 Finally, the Commission's Penalty Assessment, when referring to Tel West's conduct, actually
 6 refers interchangeably to "authorization" and "verification".

7 Since Staff and the Commission have failed to accurately and consistently assert a
 8 violation of the Commission's line freeze verification rules, Tel West does not have fair notice
 9 about the claim and the grounds upon which the claim rests. Therefore, the Commission may not
 10 impose a penalty against Tel West for its line freeze verification procedures. *Williams v. Western*
 11 *Surety*, 6 Wn. App. 300 (1972).

12 **B. Staff Alleged Fewer Violations**

13 The Commission's Penalty Assessment cited Tel West for 397 violations of the timely
 14 response rules. However, upon review of Staff's email communications with Tel West, Staff had
 15 cited Tel West for less than 325 violations. Under the principle of equitable estoppel, the
 16 Commission may not assess a penalty against Tel West for violations which the Staff did not cite.
 17 The state is subject the doctrine of equitable estoppel when: (1) a statement or act by the
 18 government is inconsistent with a claim later asserted; (2) the plaintiff reasonably relied upon the
 19 statement or act; (3) the plaintiff would be injured if the government is allowed to contradict its
 20 prior statement or act; (4) estoppel is necessary to prevent a manifest injustice, and (5) estoppel
 21 would not impair the exercise of governmental functions. *Department of Ecology v. Campbell &*
 22 *Gwinn, L.L.C., et al.*, 146 Wn.2d 1, 43 P.3d 4 (2002). Each of these factors are met in this case.

23 The number of violations in the Staff Report exceed the violations from the Staff in the
 24 following instances:

<u>COMPLAINT NUMBER</u>	<u>STAFF REPORT</u>	<u>STAFF CITATION</u>	<u>REDUCTION IN VIOLATIONS</u>
84316	5	0	5

<u>COMPLAINT NUMBER</u>	<u>STAFF REPORT</u>	<u>STAFF CITATION</u>	<u>REDUCTION IN VIOLATIONS</u>
84816	53	1	52
85015	8	5	3
86938	6	0	6
87780	3	2	1
88188	6	3	3
88212	11	7	4
88214	4	2	2
Total			75

Since the Staff had not found these violations to have occurred, the Commission must reduce the number of violations down to at least 322. *Declaration of Debra McBride.*

According to Tel West's review of the records, the Commission should not find Tel West in violation of the timely response rules in the following cases:

<u>COMPLAINT NUMBER</u>	<u># VIOLATIONS PER STAFF REPORT</u>	<u>REASON FOR REDUCTION</u>	<u>REQUESTED REDUCTION IN # VIOLATIONS</u>
85585	40	Tel West did not receive 9/26/03 email message from Staff, and responded same day when email was received; Tel West responded to 10/14/03 email message on 10/28/03.	33
86836	1	The complaint was sent to the wrong Tel West contact despite prior notice to the Staff of the change in contact. The response was provided within the required time after receipt by the appropriate Tel West contact.	1
87418 and 87843	3	Customer did not file complaint, Qwest filed the complaint. Qwest is not authorized to file informal complaints on behalf of customers.	3
87759	7	Staff informed Tel West that the TPV file had been reviewed for the second time, but did not request	7

<u>COMPLAINT NUMBER</u>	<u># VIOLATIONS PER STAFF REPORT</u>	<u>REASON FOR REDUCTION</u>	<u>REQUESTED REDUCTION IN # VIOLATIONS</u>
		additional information, therefore there cannot be a violation for untimely response.	
87670	28	Tel West provided TPV sound files on 2/11/04. Tel West had already provided Staff with the software to listen to the TPV files.	28
88017	6	Staff email dated 3/12/04 was a request for a favor for the customer, not a request for additional information.	6
Total			78

Based upon the facts summarized above, the Commission should reduce the number of alleged violations by an additional 78, to a number no greater than 244. *Declaration of Debra McBride.*

In addition to the doctrine of equitable estoppel discussed above, the Commission should exercise its discretion and mitigate the Penalties for the following reasons. Tel West's failure to respond in a timely manner was caused by the confusion over the Staff's assertions that Tel West did not have customers' authorizations to place a line freeze, the tremendous growth in Tel West's business, and the significant number of critical projects (e.g., implementation of facilities based residential and small business competition; new billing system) that Tel West's small staff was trying to complete. Tel West has now hired a regulatory manager who has sole responsibility for responding to inquiries from the Commission. Since the time the new regulatory manager has been on staff, Tel West has responded to inquiries from the Commission in a timely manner. Therefore, Tel West respectfully requests that the Commission exercise its discretion and reduce the number of violations to 34, one for each complaint where Staff asserted Tel West had not responded in a timely manner.

C. The Penalties should be substantially reduced under the Commission's legal standards.

1 Under the legal standard established by the Commission, the penalty against Tel West is
2 not appropriate. In *MCI Metro Access Transmission Services, Inc. v. US WEST*
3 *Communications, Inc.*, 1999 W.L. 132851 (Feb. 10, 1999), the WUTC articulated eight criteria to
4 guide its decision whether to impose penalties. They are:

- 5 (1) the offending conduct was associated with new requirements of first impression;
- 6 (2) the offending party should have known its conduct constituted a violation;
- 7 (3) the offending conduct was knowing or intentional;
- 8 (4) the offending conduct was gross or malicious;
- 9 (5) repeated violations occurred;
- 10 (6) the Commission previously had found violations;
- 11 (7) the offending conduct improved; and
- 12 (8) remedial steps were undertaken.

13 In addition, the Commission recently added a ninth criteria (In re Penalty Assessment No. UE-
14 031942, Pacificorp, d/b/a Pacific Power and Light Company, Order No. 2.):

- 15 (9) the penalty should be in rough proportion to the seriousness of the offense and the
16 company's demonstrated willingness to comply.

17 In this case, these criteria dictate the substantial reduction of the penalty against Tel West.
18 First, while the rules in question are not new rules, the first time they applied to Tel West's
19 business operations was when Tel West initiated its new telemarketing campaign. In addition,
20 this matter appears to be the first time that the Commission is interpreting the authorization and
21 verification rules. Concerning the second and third factors, Tel West unfortunately relied upon
22 advice from its TPV vendor when drafting the TPV script, but Tel West acknowledges that it
23 retains sole responsibility for the content of its script.

24 Concerning the fourth factor, Tel West's conduct was not gross or malicious in any
25 manner, and Staff has not alleged any fraud, slamming or cramming in this matter. Concerning
26 the fifth factor, the line freeze allegations arise out of two versions of Tel West's TPV script, and

1 Tel West modified the scripts twice in two months to address the Staff's stated concerns.
 2 Concerning the sixth factor, the Commission has not previously found that Tel West had violated
 3 these rules. Concerning the seventh and eighth factors, the offending conduct was corrected
 4 completely, and there were no financial losses by customers which should be remedied.

5 Concerning the ninth factor, it is clear that Tel West's conduct did not have a serious
 6 impact upon its customers, and did not constitute a serious violation of the Commission's rules:

- 7 - No customers were out of service as a result of the verification process.
- 8 - No customers suffered any financial harm as a result of the verification process.
- 9 - No customers' health or property were placed in jeopardy as a result of the verification
 10 process.
- 11 - The only words missing from Tel West's TPV script was:

12 **"Is this okay?"**

13 These three missing words, after the customers had authorized the line freeze during the sales
 14 process, simply do not warrant a \$103,400 penalty.

15 Tel West also believes that the Commission should adopt a tenth standard for the
 16 assessment of penalties: proportionate to other penalties assessed by the Commission. The
 17 Commission should adopt a policy of treating all regulated entities in a fair and
 18 nondiscriminatory manner, and the penalties assessed against one regulated entity should be fair
 19 and nondiscriminatory when compared to penalties against other regulated entities. When the
 20 Commission compares the Penalties in this matter with the penalties assessed against other
 21 regulated entities, it is clear that the Penalties against Tel West are excessive:

<u>DOCKET</u>	<u>ENTITY</u>	<u>NATURE OF OFFENSE</u>	<u>PENALTY</u>
UG-020230 & UG-020232	Basin Frozen Foods, Inc.	Numerous violations of natural gas pipeline safety and documentation rules, including continuing violations from Commission Compliance Order 17 months earlier.	\$40,000 per settlement agreement

<u>DOCKET</u>	<u>ENTITY</u>	<u>NATURE OF OFFENSE</u>	<u>PENALTY</u>
UT-990043	Qwest Corporation	Countless violations of verbal payphone rate disclosure rules.	\$30,000, plus \$10,300 suspended, per settlement agreement
UT-991680	Northwest Paytele Communications	Violations of nine payphone posting rules during 6 month period; continuing violations after petition for mitigation was filed.	\$900 per Commission Order
UW-031596	Virgil R. Fox, President, American Water Resources, Inc.	Unauthorized diversion of customer funds from Commission-ordered bank account, and failure to fund bank account \$4.40 per month for each of 1,500 customers as ordered by Commission; violations continued over 15 months.	\$3,700; proceedings pending
UE-031942	PacifiCorp, d/b/a Pacific Power and Light Company	Failure to file draft RFP for 113 days.	Penalty of \$11,300, mitigated to \$5,000.
TV-000418	Dan Busby d/b/a Careful Movers, Careful and Courteous Movers	Operating and advertising as a public service company without holding a permit.	Penalty of \$3,000, reduced to \$1,500 under settlement agreement.
UT-971063	U S WEST Communications, Inc.	MCI Metro v. U S WEST formal complaint; Commission found U S WEST had committed numerous violations of state statutes and rules which affected the pace of competition in Washington state.	\$0

The penalty cases cited above include multiple, long-term violations of Commission rules, including hazards to public safety, impairment of competition, and misuse of funds. All of the penalties cited above are dramatically smaller than the Penalties in this matter, and the violations were more severe than the allegations against Tel West. The Commission should reduce the Penalties against Tel West to an amount lower than most of those cited above as a

UT-040572 - APPLICATION FOR
MITIGATION OF PENALTIES -- 11

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1 matter of fundamental fairness and to be consistent with a policy of nondiscrimination among
2 regulated entities.

3 Finally, Tel West believes that the Commission should evaluate the Penalties in light of
4 the potential impact upon competition in Washington state, and the message the Commission
5 sends to competitive telephone companies in Washington state. The Penalties are a substantial
6 portion of Tel West's profits, a significant portion of Tel West's intrastate revenue, and would
7 create a loss for the fiscal year for this line of Tel West's business. *Declaration of Jeff Swickard.*
8 In light of the lower profit margins available to competitive telephone companies, the
9 Commission should evaluate the impact of its penalty assessments upon telecommunications
10 competition in Washington state. To put the Penalties into perspective, if this same penalty (as a
11 percent of intrastate revenue) was assessed against Qwest Corporation, Tel West estimates the
12 penalty would be well \$40,000,000. Tel West believes the Penalties should be reduced to keep
13 competition healthy in Washington state.

14 D. **The Penalties Violate the "Excessive Fine Clause" of the Eighth Amendment.**

15 The Penalties violate the Excessive Fines Clause of the Eighth Amendment to the
16 U.S. Constitution because they are grossly disproportional to the nature of Tel West's conduct.

17 The Eighth Amendment of the U.S. Constitution mandates that "Excessive bail shall not
18 be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."
19 (Hereinafter referred to as the "Excessive Fines Clause".) The purpose of the Excessive Fines
20 Clause is to limit the government's power to punish for an offense. *Browning-Ferris Industries*
21 *of Vt., Inc., v. Kelco Disposal, Inc.*, 492 U.S. 257 (1989). The notion of punishment cuts across
22 the division between the civil and the criminal law. *United States v. Halper*, 490 U.S. 435
23 (1989). When a civil sanction does not serve solely a remedial purpose, but can only be
24 explained as retribution or as a deterrent, the civil sanction is considered to be a punishment
25 subject to the Excessive Fines Clause. *Id.*

1 A penalty is unconstitutional if it is grossly disproportional to the gravity of the
2 defendant's offense. *United States v. Bajakajian*, 524 U.S. 321 (1998). In *Bajakajian*, the
3 defendant attempted to transport \$357,144 out of the country without filing the required reports
4 with the federal government. The U.S. Supreme Court ruled that the forfeiture of the entire
5 \$357,144 violated the Excessive Fines Clause because the forfeiture was grossly disproportional
6 to the offense—a failure to file a report with the government, where no criminal activity or fraud
7 was involved and there were no other injuries or damages.

8 Governmental agencies and courts must compare the amount of the penalty with the
9 extent of the harm that the defendant caused. The factors that the Commission must consider
10 include whether there was criminal conduct involved; whether anyone was physically or
11 financially harmed and if so, the extent of the harm; and whether any fraud was perpetrated upon
12 the government, the public or any individual. *Id.*, at 339 – 340.

13 During all times relevant for the Penalties, Tel West's "offense" for the line freeze
14 verification process was simply the omission of three words: "Is this okay?" During the TPV
15 call, Tel West's TPV vendor expressly mentioned the line freeze and simply failed to ask the
16 customer to vocalize their confirmation of the line freeze. The omission of the three words "Is
17 this okay?" is not criminal, did not physically or financially harm anyone, and did not perpetrate
18 a fraud on anyone. The Commission's \$143,100 penalty against Tel West clearly does not serve
19 any remedial purpose; neither the Commission nor the Staff Report allege any remedies which
20 must be paid to Tel West's customers or former customers. Therefore, the Penalty violates the
21 Excessive Fines Clause and must be eliminated or substantially reduced.

22 IV. CONCLUSION

23 For the reasons stated above, the Commission should substantially reduce the Penalties
24 against Tel West in this matter.

1 RESPECTFULLY SUBMITTED this 8th day of July, 2004.

2 GRAHAM & DUNN PC

3
4 By Richard J. Busch / Judith A. Seng
5 Richard J. Busch
6 WSBA# 16739
7 Email: rbusch@grahamdunn.com
8 Attorneys for Tel West Communications, LLC
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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of,

TEL WEST COMMUNICATIONS, LLC

) No. UT-040572

) DECLARATION OF KERRY MYERS
) IN SUPPORT OF APPLICATION FOR
) MITIGATION OF PENALTY

1. I, Kerry Myers, make this declaration based upon personal knowledge.

2. I am the Financial Services Manager of Tel West Communications, LLC ("Tel West"). My business address is 3701 South Norfolk Street, Suite 300, Seattle, Washington 98118.

3. Tel West retained a telemarketing firm and a third party verification ("TPV") firm to assist us with our marketing campaign. During my involvement with the telemarketing campaign, to my knowledge the sales script included Tel West's disclosure to the potential customer that a line freeze is offered with Tel West's service, and that their authorization to place the line freeze would be confirmed by a third party verification service. If any customer indicates that they do not want the line freeze on their account—either during the sales authorization process or during the verification process—the line freeze is not placed on the customer's account. Tel West proactively offers to place a line freeze on customers' accounts because some of Tel West's customers had been slammed by other telecommunications carriers.

1 4. Prior to my involvement, the TPV firm recommended certain language for Tel
2 West's verification script, and Tel West unfortunately accepted the TPV firm's recommendation.
3 During the telemarketing campaign, Tel West used multiple scripts (one script at any given time)
4 to confirm customers' authorization to switch their telecommunications services to Tel West.
5 Since December 2, 2003, Tel West used the following two TPV scripts: Exhibit 1 is the TPV
6 script used from December 2, 2003 through February 24, 2004. Exhibit 2 is the TPV script Tel
7 West started using on February 25, 2004. In May 2004 we added the language "The freeze can
8 be easily removed by calling Tel West." Exhibit 3 is the version with the added language in use
9 today.

10
11 I declare under penalty of perjury under the laws of the State of Washington that the
12 foregoing is true and correct.

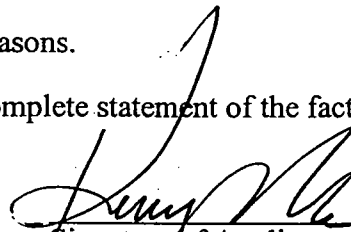
13 Executed at Seattle, Washington this 8th day of July 2004.

14
15
16 By 
 Kerry Myers

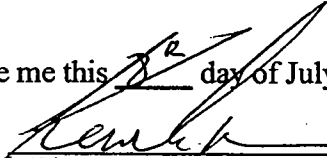
1 State of Washington)
2 County of King) .ss
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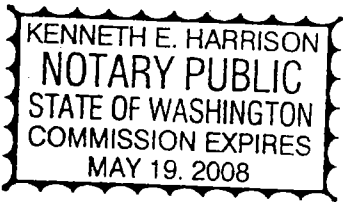
4 I have read and understand RCW 9A.72.030 and .080, which proscribe penalties for
5 making false affidavits (printed below) and hereby apply, under oath, for mitigation of Penalty
6 Assessment No. UT-040572 for the foregoing reasons.

7 I swear that the foregoing is a true and complete statement of the facts in this case.

8
9 
Signature of Applicant

10
11 SUBSCRIBED AND SWORN TO before me this 22nd day of July, 2004.

12 
13 (Signature)
14 Kenneth E. Harrison
(Please print name legibly)



15 NOTARY PUBLIC in and for the State of
16 Washington.
17 My commission expires: May 19, 2008.

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Exhibit 1 to Declaration of Kerry Myers

Third Party Verification Script

Effective December 2, 2003 through February 24, 2004

Representative thank you for transferring the call please clear the line. Hello Mr/Ms. ___ my name is ___ with Capitol Verification. The purpose of this call is to verify your decision to switch your local and long distance telephone service to Tel West Communications. To maintain quality service, I will be recording our conversation. Today's date is ___, Is your main telephone number ___ ?

Please respond with a clear YES or NO to each of the following statements. Are you over the age of 18 and authorized to make changes in telephone carriers for your household? (Y/N) Do you authorize Tel West to provide your local telephone service? (Y/N) Your instate long distance service, which includes intraLATA service? (Y/N) Your state-to-state long distance service, which includes your interLATA service? (Y/N) Your international service? (Y/N) Do you understand that Tel West is a separate company and in no way affiliated with Qwest? (Y/N)

You've selected The Value Plan, which includes your phone line, 200 minutes of monthly long distance and Call Waiting, Three-Way Calling, Caller ID and Caller ID on Call Waiting for \$29.99. The package total is <<PACKAGETOTAL31>> plus the associated local, state and federal taxes and surcharges. For your protection a local line freeze will be placed on your line. Removal of the local line freeze can be easily obtained by calling Tel West. If you would like additional features added to your account you should call Tel West to request. You will receive a \$10 credit certificate in your welcome packet to use towards your first months service.

If you cancel your service within 30 days you will not be charged the waived activation. Activation and installation fee of \$79.99 will not be charged if you remain on Tel West service for 12 months or you cancel your service within 30 days of activation. If you should go over the allotted minutes of Long Distance in your package, your rate will be 5 cents per minute for both in-state and state-to-state long distance. You will be mailed a welcome packet once your order completes. You should review the welcome packet and call Tel West if you have any questions.

Mr/Ms___, the FCC requires positive identification, we simply need your date of birth to confirm that we are speaking with you. What name does appear on your current Qwest account? (Repeat spelling for accuracy) Please spell your address.(make sure spelling is correct! NO PO BOXES)

Great. Tel West will be conducting a limited credit review to determine your eligibility for this program. Upon approval, Tel West will process your order within 30 days. If you have any questions, please feel free to call Tel West toll free at 1-800-782-4180. Thank you for your time. Goodbye. (rep can not come back on the line for any reason)

Exhibit 2 to Declaration of Kerry Myers

Third Party Verification Script

Effective February 25, 2004 – May 24, 2004

Representative thank you for transferring the call please clear the line. Hello Mr/Ms. ___ my name is ___ with Capitol Verification. The purpose of this call is to verify your decision to switch your local and long distance telephone service to Tel West Communications. To maintain quality service, I will be recording our conversation. Today's date is ___, Is your main telephone number ___ ?

Please respond with a clear YES or NO to each of the following statements. Are you over the age of 18 and authorized to make changes in telephone carriers for your household? (Y/N) Do you authorize Tel West to provide your local telephone service? (Y/N) Your instate long distance service, which includes intraLATA service? (Y/N) Your state-to-state long distance service, which includes your interLATA service? (Y/N) Your international service? (Y/N) Do you understand that Tel West is a separate company and in no way affiliated with Qwest? (Y/N)

You've selected The Value Plan, which includes your phone line, 200 minutes of monthly long distance and Call Waiting, Three-Way Calling, Caller ID and Caller ID on Call Waiting for \$29.99. The package total is \$29.99 plus the associated local, state and federal taxes and surcharges. For your protection a local line freeze will be placed on your line. Is this okay? YES ___, NO _____. (If they decline or approve the freeze - it will not effect whether or not we complete the verification process). If you would like additional features added to your account you should call Tel West to request.

You will receive a \$10 credit certificate in your welcome packet to use towards your first months service.

If you cancel your service within 30 days you will not be charged the waived activation. Activation and installation fee of \$79.99 will not be charged if you remain on Tel West service for 12 months or you cancel your service within 30 days of activation. If you should go over the allotted minutes of Long Distance in your package, your rate will be 5 cents per minute for both in-state and state-to-state long distance. You will be mailed a welcome packet once your order completes. You should review the welcome packet and call Tel West if you have any questions.

Mr/Ms ___, the FCC requires positive identification, we simply need your date of birth to confirm that we are speaking with you. What name does appear on your current Qwest account? (Repeat spelling for accuracy) Please spell your address.(make sure spelling is correct! NO PO BOXES)

Great Tel West will be conducting a limited credit review to determine your eligibility for this program. Upon approval, Tel West will process your order within 30 days. If you have any questions, please feel free to call Tel West toll free at 1-800-782-4180. Thank you for your time. Goodbye. (rep can not come back on the line for any reason)

**Exhibit 3 to Declaration of Kerry Myers
Third Party Verification Script
Effective May 25, 2004 – Current**

Representative thank you for transferring the call please clear the line. Hello Mr/Ms. ___ my name is ___ with Capitol Verification. The purpose of this call is to verify your decision to switch your local and long distance telephone service to Tel West Communications. To maintain quality service, I will be recording our conversation. Today's date is ___, Is your main telephone number ___ ?

Please respond with a clear YES or NO to each of the following statements. Are you over the age of 18 and authorized to make changes in telephone carriers for your household? (Y/N) Do you authorize Tel West to provide your local telephone service? (Y/N) Your instate long distance service, which includes intraLATA service? (Y/N) Your state-to-state long distance service, which includes your interLATA service? (Y/N) Your international service? (Y/N) Do you understand that Tel West is a separate company and in no way affiliated with Qwest? (Y/N)

You've selected The Value Plan, which includes your phone line, 200 minutes of monthly long distance and Call Waiting, Three-Way Calling, Caller ID and Caller ID on Call Waiting for \$29.99. The package total is \$29.99 plus the associated local, state and federal taxes and surcharges. For your protection a local line freeze will be placed on your line. Is this okay? YES___, NO _____. (If they decline or approve the freeze - it will not effect whether or not we complete the verification process). The local line freeze can be easily removed by calling Tel West. If you would like additional features added to your account you should call Tel West to request.

You will receive a \$10 credit certificate in your welcome packet to use towards your first months service.

If you cancel your service within 30 days you will not be charged the waived activation. Activation and installation fee of \$79.99 will not be charged if you remain on Tel West service for 12 months or you cancel your service within 30 days of activation. If you should go over the allotted minutes of Long Distance in your package, your rate will be 5 cents per minute for both in-state and state-to-state long distance. You will be mailed a welcome packet once your order completes. You should review the welcome packet and call Tel West if you have any questions.

Mr/Ms___, the FCC requires positive identification, we simply need your date of birth to confirm that we are speaking with you. What name does appear on your current Qwest account? (Repeat spelling for accuracy) Please spell your address.(make sure spelling is correct! NO PO BOXES)

Great Tel West will be conducting a limited credit review to determine your eligibility for this program. Upon approval, Tel West will process your order within 30 days. If you have any questions, please feel free to call Tel West toll free at 1-800-782-4180. Thank you for your time. Goodbye. (rep can not come back on the line for any reason)

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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of,)	No. UT-040572
TEL WEST COMMUNICATIONS, LLC)	DECLARATION OF DONALD TAYLOR
)	IN SUPPORT OF APPLICATION FOR
)	MITIGATION OF PENALTY

1. I, Donald Taylor, make this declaration based upon personal knowledge.
2. I am the Director - Carrier Relations and Regulatory Affairs of Tel West Communications, LLC ("Tel West"). My business address is 3701 South Norfolk Street, Suite 300, Seattle, Washington 98118.
3. My responsibilities at Tel West include receiving and responding to inquiries from the Washington Utilities and Transportation Commission ("Commission") staff ("Staff"). My employment at Tel West started on May 1, 2004. I worked as a consultant for Tel West prior to May 1, 2004.
4. Since mid-April 2004, I have had sole responsibility for receiving and responding to inquiries from Staff. Since mid-April 2004, Tel West has responded to all inquiries from Staff in a timely manner under the Commission's rules.
5. I have reviewed the Staff Report that was given to Tel West, and the email correspondence between Staff and Tel West, and Staff has not asserted that Tel West has

DECLARATION OF DONALD TAYLOR --
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GRAHAM & DUNN PC
Pier 70 ~ 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

1 engaged in any fraud, slamming or cramming arising out of Tel West's third party verification
2 process for line freezes. In addition, Staff is not asserting that Tel West owes any refunds or
3 credits to any of its current or former customers as a result of Tel West's third party verification
4 process for line freezes.

5 I declare under penalty of perjury under the laws of the State of Washington that the
6 foregoing is true and correct.

7 Executed at Seattle, Washington this 8th day of July 2004.

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10 By Donald Taylor
Donald Taylor

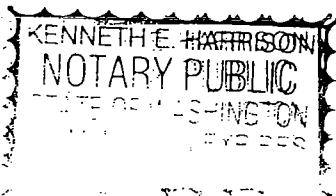
11
12 State of Washington)
13) .ss
County of King)

14 I have read and understand RCW 9A.72.030, which proscribes penalties for making false
15 affidavits and hereby apply, under oath, for mitigation of Penalty Assessment No. UT-040572 for
16 the foregoing reasons.

17 I swear that the foregoing is a true and complete statement of the facts in this case.

18 Donald Taylor
19 Signature of Applicant

20
21 SUBSCRIBED AND SWORN TO before me this 8th day of July, 2004.



22
23 Kenneth E. Harrison
(Signature)
24 Kenneth E. Harrison
(Please print name legibly)

25
26 NOTARY PUBLIC in and for the State of
Washington.

My commission expires: May 17, 2004.

DECLARATION OF DONALD TAYLOR --
2

GRAHAM & DUNN PC
Pier 70 ~ 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

COPY

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of,

TEL WEST COMMUNICATIONS, LLC

) No. UT-040572

) DECLARATION OF
) CHRISTOPHER STURGUL
) IN SUPPORT OF APPLICATION FOR
) MITIGATION OF PENALTY

1. I, Christopher Sturgul, make this declaration based upon personal knowledge.

2. I am an employee of Tel West Communications, LLC ("Tel West"). Until April 19, 2004, I was Tel West's Manager, Operations. My business address is 3701 South Norfolk Street, Suite 300, Seattle, Washington 98118.

3. My responsibilities at Tel West included receiving and responding to inquiries from the Washington Utilities and Transportation Commission ("Commission") staff ("Staff") until April 2004. My responsibilities also included management operations associated with Tel West's order processing and customer care center.

4. I received several inquiries from Staff which asserted that Tel West did not have the customers' authorization to implement a line freeze. I was confused by Staff's comments because I knew that Tel West did receive the customers' authorization to implement the line freeze during the sales authorization process.

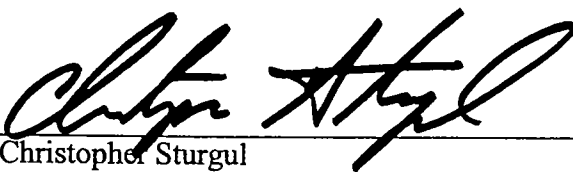
DECLARATION OF
CHRISTOPHER STURGUL -- 1

GRAHAM & DUNN PC
Pier 70 ~ 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

1 5. Due to Tel West's rapid growth, my multiple responsibilities at Tel West, and our
2 initiative to implement facilities-based competition in Washington state, some of Tel West's
3 replies to Staff were not sent in a timely manner.

4 I declare under penalty of perjury under the laws of the State of Washington that the
5 foregoing is true and correct.

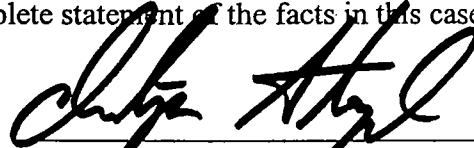
6 Executed at Seattle, Washington this 8th day of July 2004.

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8
9 By 
 Christopher Sturgul

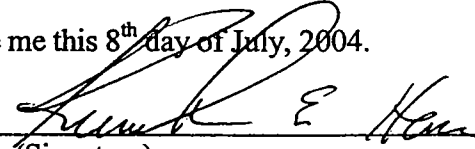
1 State of Washington)
2 County of King) .ss

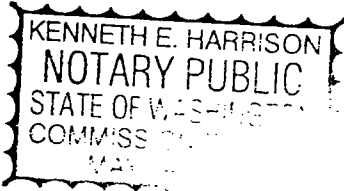
3
4 I have read and understand RCW 9A.72.030, which proscribes penalties for making false
5 affidavits and hereby apply, under oath, for mitigation of Penalty Assessment No. UT-040572 for
6 the foregoing reasons.

7 I swear that the foregoing is a true and complete statement of the facts in this case.

8 
9 _____
10 Signature of Applicant

11 SUBSCRIBED AND SWORN TO before me this 8th day of July, 2004.

12 
13 _____
14 (Signature)



15 Kenneth E. Harrison
16 _____
17 (Please print name legibly)

18 NOTARY PUBLIC in and for the State of
19 Washington.
20 My commission expires: May 18, 2008.

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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of,)	No. UT-040572
TEL WEST COMMUNICATIONS, LLC)	DECLARATION OF MAT MYERS
)	IN SUPPORT OF APPLICATION FOR
)	MITIGATION OF PENALTY

1. I, Mat Myers, make this declaration based upon personal knowledge.
2. I am an employee of Tel West Communications, LLC ("Tel West"). Until June 30, 2004, I was Tel West's Customer Solutions Center Manager. My business address is 3701 South Norfolk Street, Suite 300, Seattle, Washington 98118.
3. My responsibilities at Tel West included receiving and responding to inquiries from the Washington Utilities and Transportation Commission ("Commission") staff ("Staff") for a period of time between August 2003 and March 2004. My responsibilities also included managing the day to day operations of Tel West's order processing and customer care center.
4. I received several inquiries from Staff which asserted that Tel West did not have the customers' authorization to implement a line freeze. I was confused by Staff's comments because I knew that Tel West did receive the customers' authorization to implement the line freeze during the sales authorization process.

DECLARATION OF MAT MYERS -- 1

GRAHAM & DUNN PC
Pier 70 ~ 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

1 5. Due to Tel West's rapid growth, my multiple responsibilities, and our initiative to
2 implement facilities-based competition in Washington state, some of Tel West's replies to Staff
3 were not sent in a timely manner.

4 I declare under penalty of perjury under the laws of the State of Washington that the
5 foregoing is true and correct.

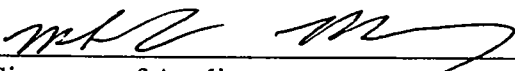
6 Executed at Seattle, Washington this 8th day of July 2004.

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8
9 By 
Mat Myers

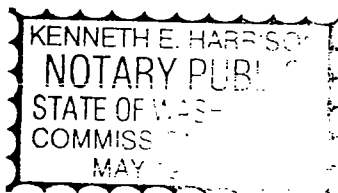
10 State of Washington)
11) .ss
12 County of King)

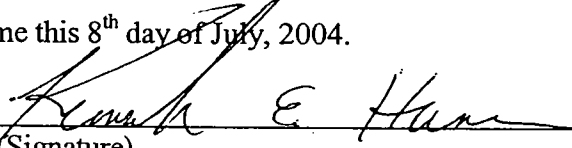
13 I have read and understand RCW 9A.72.030, which proscribes penalties for making false
14 affidavits and hereby apply, under oath, for mitigation of Penalty Assessment No. UT-040572 for
the foregoing reasons.

15 I swear that the foregoing is a true and complete statement of the facts in this case.

16
17 
18 Signature of Applicant

19
20 SUBSCRIBED AND SWORN TO before me this 8th day of July, 2004.




(Signature)

Kenneth E. Harrison
(Please print name legibly)

NOTARY PUBLIC in and for the State of
Washington.

My commission expires: May 18, 2008

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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of,) No. UT-040572
TEL WEST COMMUNICATIONS, LLC) DECLARATION OF DEBRA MCBRIDE
) IN SUPPORT OF APPLICATION FOR
) MITIGATION OF PENALTY

1. I, Debra McBride, make this declaration based upon personal knowledge.
2. I am employed by Tel West Communications, LLC ("Tel West"). My business address is 3701 South Norfolk Street, Suite 300, Seattle, Washington 98118.
3. I reviewed the Staff Report and the email correspondence between the Washington Utilities and Transportation Commission's ("Commission's") staff ("Staff") and Tel West to analyze the number of asserted violations of the Commission's timely response rules.
4. I found the following differences between the number of violations cited in the Staff Report and the number of violations cited by Staff:

<u>COMPLAINT NUMBER</u>	<u>STAFF REPORT</u>	<u>STAFF CITATION</u>	<u>REDUCTION IN VIOLATIONS</u>
84316	5	0	5
84816	53	1	52
85015	8	5	3

26

<u>COMPLAINT NUMBER</u>	<u>STAFF REPORT</u>	<u>STAFF CITATION</u>	<u>REDUCTION IN VIOLATIONS</u>
86938	6	0	6
87780	3	2	1
88188	6	3	3
88212	11	7	4
88214	4	2	2
Total			75

5. In my review, I also found the following circumstances where Tel West was not in violation of the Commission's timely response rule:

<u>COMPLAINT NUMBER</u>	<u># VIOLATIONS PER STAFF REPORT</u>	<u>REASON FOR REDUCTION</u>	<u>REQUESTED REDUCTION IN # VIOLATIONS</u>
85585	40	Tel West did not receive 9/26/03 email message from Staff, and responded same day when email was received; Tel West responded to 10/14/03 email message on 10/28/03.	33
86836	1	The complaint was sent to the wrong Tel West contact despite prior notice to the Staff of the change in contact. The response was provided within the required time after receipt by the appropriate Tel West contact.	1
87418 and 87843	3	Customer did not file complaint, Qwest filed the complaint. Qwest is not authorized to file informal complaints on behalf of customers.	3
87759	7	Staff informed Tel West that the TPV file had been reviewed for the second time, but did not request additional information, therefore there cannot be a violation for untimely response.	7

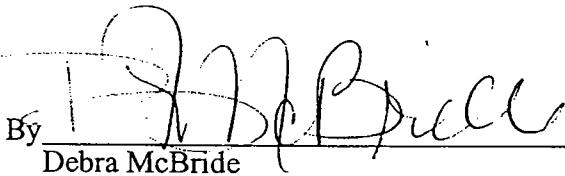
DECLARATION OF DEBRA MCBRIDE -- 2

GRAHAM & DUNN PC
Pier 70 ~ 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

<u>COMPLAINT NUMBER</u>	<u># VIOLATIONS PER STAFF REPORT</u>	<u>REASON FOR REDUCTION</u>	<u>REQUESTED REDUCTION IN # VIOLATIONS</u>
87670	28	Tel West provided TPV sound files on 2/11/04. Tel West had already provided Staff with the software to listen to the TPV files.	28
88017	6	Staff email dated 3/12/04 was a request for a favor for the customer, not a request for additional information.	6
Total			78

6. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

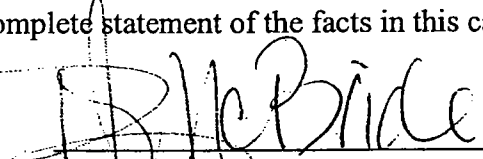
Executed at Seattle, Washington this 8th day of July 2004.

By  _____
Debra McBride

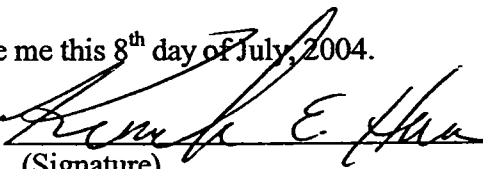
1 State of Washington)
2 County of King) .ss

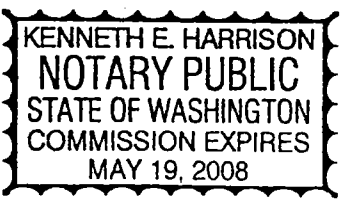
3
4 I have read and understand RCW 9A.72.030, which proscribes penalties for making false
5 affidavits and hereby apply, under oath, for mitigation of Penalty Assessment No. UT-040572 for
6 the foregoing reasons.

7 I swear that the foregoing is a true and complete statement of the facts in this case.

8 
9 _____
10 Signature of Applicant

11 SUBSCRIBED AND SWORN TO before me this 8th day of July, 2004.

12 
13 _____
14 (Signature)
15 Kenneth E. Harrison
16 _____
17 (Please print name legibly)



18 NOTARY PUBLIC in and for the State of
19 Washington.
20 My commission expires: May 19, 2008.

1 THIS PAGE IS FOR YOUR REVIEW. KEEP THIS PAGE FOR YOUR RECORDS.
2 DO NOT FILE THIS PAGE WITH THE DECLARATION AT THE COMMISSION
3
4

5 RCW 9.72.030:

6 "Perjury-Second Degree: Every person who, whether orally or in writing, and whether
7 as a volunteer or in a proceeding or investigation authorized by law, shall knowingly
8 swear falsely concerning any matter whatsoever shall be guilty of perjury in the second
9 degree and shall be punished by imprisonment in the state penitentiary for not more
10 than five years or by imprisonment in the county jail for not more than one year."
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