

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Penalty Assessment  
against ONEEIGHTY NETWORKS, INC.  
in the amount of \$100

DOCKET UT-081126

DECLARATION OF  
SHERI HOYT

SHERI HOYT, under penalty of perjury under the laws of the state of Washington, declares as follows:

1. I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
2. I am employed by the Washington Utilities and Transportation Commission (Commission) as a Compliance Investigator in the Compliance Investigations Section. I have been employed at the Commission for over 16 years, holding various positions. As a Compliance Investigator, my responsibilities include conducting investigations regarding the business practices of regulated utility or transportation companies. As part of those duties, I investigate telecommunications companies that may be operating in violation of Commission statute, rule, or tariff.
3. On July 12, 2008, Susan Lamb of Lamb Communication Services on behalf of Orbitcom, Inc. and OneEighty Networks, Inc. (Orbitcom and OneEighty, respectively) filed with the Commission an Application for Mitigation (Mitigation Request) in Docket No. UT-081126. I have read the Mitigation Request.
4. This Mitigation Request arises from a Notice of Penalties Incurred and Due for Violations of Laws and Rules issued by the Commission on July 8, 2008, in Docket UT-081126. In that Notice, the Commission issued a penalty of \$100 for a violation of Washington Administrative Code 480-120-382, which requires competitive telecommunications companies to file annual reports with the Commission by May 1 each year.
5. Before recommending the Commission issue penalties, as part of my job, I conducted an investigation of OneEighty's records. My investigation resulted in an investigation report titled, "Staff Investigation - 2007 Annual Reports"<sup>1</sup>. I identified the violation in this case from records maintained by the Commission.

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<sup>1</sup> A true and accurate copy of the investigation report is attached to this declaration as Attachment A.

## Specific Issues Addressed by Orbitcom in its Mitigation Request

### **Orbitcom states it sent a combined Orbitcom and OneEighty 2007 annual report under the name of Orbitcom, Inc., via FedEx on April 30, 2008**

6. In its Mitigation Request, Orbitcom requests the Commission rescind the penalty of \$100. Orbitcom states it purchased OneEighty in November 2008 and notified the Commission of the purchase and its intent to use the trade name of One Eighty Networks on February 4, 2008.<sup>2</sup> Orbitcom further states that it filed a combined Orbitcom and OneEighty 2007 Annual Report under the name of Orbitcom, Inc., which it sent via FedEx on April 30, 2008. Finally, Orbitcom states that the filing included a cover letter that advised the Commission of the purchase of OneEighty by Orbitcom and that operations were continuing under the name of OneEighty.
7. Commission records indicate Orbitcom's 2007 annual report was received on May 1, 2008. Commission records confirm that a cover letter was included as claimed by Orbitcom.<sup>3</sup> The letter advises the Commission that OneEighty will continue doing business in the state of Washington under the assumed business name of One Eighty Networks, a division of OrbitCom, Inc.,<sup>4</sup> and that it was filing its annual report under the name of OrbitCom, Inc.

### **Staff Recommendation**

8. The Commission received Orbitcom and OneEighty's combined 2007 annual report by the deadline of May 1, 2008. Because the filing was timely, Staff recommends rescission of the penalty. In the alternative, Staff recommends that the Commission mitigate the penalty in its entirety.

DATED at Olympia, Washington, and effective August \_\_\_\_, 2008.

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SHERI HOYT

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<sup>2</sup> See Docket UT-080252, Notice of Acquisition of OneEighty Networks, Inc. by Orbitcom, Inc.

<sup>3</sup> A true and accurate copy of the Orbitcom cover letter is attached as Attachment B.

<sup>4</sup> On July 22, 2008, Orbitcom, Inc. filed a name change to Orbitcom, Inc. d/b/a OneEighty Networks in Docket UT-081359 and a notice of cessation of service by OneEighty Networks, Inc. in Docket UT-081358.

## Attachment A

### Telecommunications Companies Staff Investigation - 2007 Annual Reports June 12, 2008

#### Purpose

The purpose of this investigation is to determine if 42 telecommunications companies<sup>1</sup> are in violation of Washington Administrative Code (WAC) 480-120-382. WAC 480-120-382 requires competitively classified telecommunications companies to furnish annual reports to the Washington Utilities and Transportation Commission (commission) no later than May 1 each year.

#### Background

This investigation was prompted by commission staff's yearly review of annual reports for telecommunications companies registered in the state of Washington.

On February 29, 2008, the commission mailed 2007 Annual Report forms and 2008 Regulatory Fee packets to competitive telecommunications companies registered in Washington State. A letter from Executive Secretary Carole Washburn instructed companies to file annual reports and pay regulatory fees by May 1, 2008<sup>2</sup>. Further, the letter stated failure to file the annual report by May 1 would result in a penalty and possible revocation of the company's registration to operate in Washington. Those companies wishing to request an extension to file the annual report were asked to do so prior to May 1, providing a reason for the requested extension. None of the 42 companies listed in Appendix A requested an extension.

On April 1, 2008, the commission mailed a notice to all telecommunications companies reminding them that 2007 annual reports and 2008 regulatory fees were due by May 1, 2008<sup>3</sup>.

#### Investigation

The 42 telecommunications companies listed in attached Appendix A failed to file their 2007 annual reports by the May 1 deadline. On May 15, 2008, the commission sent letters to those companies that had not yet filed their reports. The letter, signed by Carole Washburn, gave an extension to companies to file their reports by May 30, 2008<sup>4</sup>. In the letter, Ms. Washburn stated the commission would not seek a fine or move to revoke the registration of any company with a report received by the commission postmarked no later than May 30.

Five companies that failed to file their 2007 annual report by the May 30 extended deadline also failed to file their 2006 annual report timely and, as a result, in July 2007, each received a \$100 penalty assessment. Those companies are included in Appendix A and are distinguished by recommended penalty amounts of \$200 for two consecutive years of non-compliance.

One company that failed to file its 2007 annual report by the May 30 extended deadline also failed to file its 2005 annual report timely and previously received a \$100 penalty assessment in 2006. In addition, that same company failed to file its 2006 annual report timely and, as a result, received a \$200 penalty assessment in 2007. That company is included in Appendix A and is distinguished by a recommended penalty amount of \$300 for three consecutive years of non-compliance.

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<sup>1</sup> See Appendix A for a list of the telecommunications companies.

<sup>2</sup> See Appendix B for a copy of the February 29, 2008, letter sent to telecommunications companies.

<sup>3</sup> See Appendix C for a copy of the April 1, 2008, reminder notice sent to telecommunications companies.

<sup>4</sup> See Appendix D for a copy of the May 15, 2008, letter sent to delinquent telecommunications companies.

It should also be noted that on December 6, 2005, Grande Communications Networks, Inc., included in Appendix A with a recommended \$100 penalty assessment, received a \$100 penalty assessment in docket UT-051701 for failure to file its 2004 annual report timely. Despite repeated collection attempts the company has not responded to commission or Attorney General staff and the penalty assessment remains unpaid.

**Recommendation:**

Staff recommends the commission issue a \$100 penalty assessment each to the 36 telecommunications companies that failed to file a 2007 annual report by May 30, 2008. In addition, staff recommends the commission issue a \$200 penalty assessment each to the five telecommunications companies that received \$100 penalty assessments in 2007 and a \$300 penalty assessment to one telecommunications company that received a \$200 penalty assessment in 2007.

Staff finds it appropriate that the companies receive escalating penalties due to continued violations of WAC 480-120-382. RCW 80.04.405 allows penalties of \$100 for every such violation. Each and every such violation is a separate and distinct offense and in case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation.

**APPENDIX A**

	<b>Company Name</b>	<b>Report Received Yes or No</b>	<b>If yes, Date Received</b>	<b>Recommended Penalty Amount</b>
1.	Advanced Telemanagement Group, Inc.	No		\$100
2.	Air Speed, LLC	No		\$100
3.	AK Communications, Inc.	No		\$100
4.	AuBeta Networks Corporation	No		\$100
5.	Cypress Communications Operating Company, Inc.	No		\$100
6.	Devine Communications, Incorporated	No		\$100
7.	DSLnet Communications, LLC	No		\$100
8.	Epixtar Communications Corp.	No		\$100
9.	France Telecom Corporate Solutions, L.L.C.	No		\$100
10.	FreedomStarr Communications, Inc.	No		\$100
11.	Global Telecom & Technology Americas, Inc.	No		\$100
12.	Grande Communications Networks, Inc.	No		\$100
13.	Great America Networks, Inc.	No		\$100
14.	InteraTel, LLC	No		\$100
15.	Jambo, Inc.	No		\$100
16.	Least Cost Routing, Inc. d/b/a Long Distance Charges	No		\$100
17.	LSSi Data Corporation	No		\$100
18.	MetroNet Fiber Washington, Inc.	No		\$100
19.	Murray & Sons Construction LLC	No		\$100
20.	North County Communications Corp.	No		\$100
21.	Northwest Info Net, Inc.	No		\$100
22.	Northwest Open Access Network	No		\$100
23.	OneEighty Networks, Inc.	No		\$100
24.	Pacific Centrex Services, Inc.	No		\$100
25.	PTS Access Networks, Inc.	No		\$100
26.	Quality Telephone, Inc.	No		\$100
27.	StarVox Communications, Inc.	No		\$100
28.	TeleCents Communications, Inc.	No		\$100
29.	Teledata Solutions, Inc.	No		\$100
30.	Telmex USA, L.L.C.	No		\$100
31.	Tempest Global Telecom, Inc.	No		\$100
32.	Touch 1 Communications, Inc.	No		\$100
33.	Trinsic Communications, Inc.	No		\$100
34.	Umpqua Indian Development Corp.	No		\$100

	<b>Company Name</b>	<b>Report Received Yes or No</b>	<b>If yes, Date Received</b>	<b>Recommended Penalty Amount</b>
35.	Vycera Communications, Inc.	No		\$100
36.	Yak Communications (America) Inc.	No		\$100
37.	Marathon Communications Corporation	No		\$200
38.	Nations Broadband, Inc.	No		\$200
39.	Tel West Communications, LLC	No		\$200
40.	TSS Digital Services, L.L.C.	No		\$200
41.	Who's Calling, Inc.	No		\$200
42.	PHONETEC, LP	No		\$300

## APPENDIX B



STATE OF WASHINGTON

### WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250  
(360) 664-1160 • TTY (360) 586-8203

February 29, 2008

Dear Regulated Company:

**Subject: Your 2007 Annual Report and 2008 Regulatory Fees are Due May 1, 2008**

State law requires you to file an annual report and pay regulatory fees to the Washington Utilities and Transportation Commission (UTC).

**What is required of me?**

By May 1, you must:

- Complete and file the enclosed 2007 annual report form
- Pay your 2008 regulatory fees

**What happens if I do not file my annual report by May 1?**

If you do not file your company's annual report by May 1 commission staff will recommend a financial penalty and may recommend revocation of your authority to operate in Washington.

**What happens if I do not pay my regulatory fees by May 1?**

If you do not pay your company's regulatory fee by May 1, you will incur:

- a 2 percent penalty on the amount due; and
- a 1 percent monthly interest charge on the unpaid balance.

**May I request an extension of time if I am unable to file the annual report by May 1?**

Yes, however, you must provide the request in writing, including a valid reason for the extension no later than May 1. We will notify you whether your request is approved or denied. You will still be liable for penalty and interest payments if you fail to pay your regulatory fees by May 1. If you are late filing your annual report or fail to file, you could incur additional penalties up to \$100 a day.

**May I designate any information that I submit in my annual report as confidential?**

Yes, however, you must follow the strict legal guidelines outlined in WAC 480-07-160 (3). You may find a copy of this rule at the UTC Website, [www.utc.wa.gov](http://www.utc.wa.gov). Locate "Quick Links" on the right side of the home page then select "2007 annual reports."

**Where do I mail my completed annual report form and regulatory fee payment?**

Washington Utilities and Transportation Commission  
PO Box 47250  
Olympia, WA 98504-7250

**Where may I obtain an electronic version of the annual report form?**

Forms are available on our website at [www.utc.wa.gov](http://www.utc.wa.gov). Locate "Quick Links" on the right side of the home page and then select "2007 annual reports."

**Who do I contact if I have questions?**

You may call 360-664-1152 or e-mail us at: [annualreports@utc.wa.gov](mailto:annualreports@utc.wa.gov). If you need this information in an alternate format, please call 360-664-1133. The TTY Toll Free phone number is 1-800-416-5289.

Sincerely,



Carole J. Washburn  
Executive Secretary

Enclosures



APPENDIX C

**Reminder!**  
**Annual Reports and Regulatory Fees are due May 1, 2008**

On February 29, we sent you a 2007 annual report form and 2008 regulatory fee form. This is just a friendly reminder that your company's completed annual report and regulatory fees are due, postmarked, no later than May 1.

If you already mailed your annual report and regulatory fees, **thank you!** Please disregard this notice. If you have not yet filed, please be sure not to miss this deadline

You may mail your completed annual report form and regulatory fee payment to:

Washington Utilities and Transportation Commission  
PO Box 47250  
Olympia, WA 98504-7250

You may obtain an electronic version of the annual report and regulatory fee sheet at our website, [www.utc.wa.gov](http://www.utc.wa.gov). Locate "Quick Links" then select "2007 annual reports".

If you have questions about your report or fee or need assistance, please contact staff for your industry, listed below:

Industry	Contact
Bus – Nonprofit Special Needs	Carolyn Caruso at (360) 664-1244 or e-mail at <a href="mailto:ccaruso@utc.wa.gov">ccaruso@utc.wa.gov</a>
Electric	Roland Martin at (360) 664-1304 or e-mail at <a href="mailto:rmartin@utc.wa.gov">rmartin@utc.wa.gov</a>
Gas	Roland Martin at (360) 664-1304 or e-mail at <a href="mailto:rmartin@utc.wa.gov">rmartin@utc.wa.gov</a>
Railroad	Lori Halstead at 360-664-1262 or email at <a href="mailto:lhalstea@utc.wa.gov">lhalstea@utc.wa.gov</a>
Auto-Transportation - Bus, Commercial Ferry, Household Goods, Low-level Radioactive Waste, Pipelines, Solid Waste, Telecommunications or Water	Jeff Schmidlkofer at (360) 664-1152 or e-mail at <a href="mailto:annualreports@utc.wa.gov">annualreports@utc.wa.gov</a>

Annual Report Reminder

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If you fail to pay your regulatory fee or file your company's annual report, postmarked by May 1, commission staff will recommend the commission issue a financial penalty. Staff may also recommend that the commission cancel your authority to operate in Washington.

Please don't let either happen. If you have questions or needed assistance, please contact us at the numbers listed above.

Sincerely,

Carole J. Washburn  
Executive Secretary

## APPENDIX D

May 15, 2008

Attention:

Your annual report to the Utilities and Transportation Commission (commission) was due by May 1 as required by law. You are now subject to enforcement action by the commission, including financial penalties. This letter tells you what you can do to avoid this. **If you have already submitted your annual report, please disregard this notice.**

Commission staff mailed you a 2007 annual report form and fee calculation sheet on February 29, 2008. On April 1, 2008, staff mailed a reminder to file your report and pay your fees. Commission records indicate that you have not yet filed the completed report form.

**Commission staff will file for enforcement action against your company unless your completed report is received postmarked no later than May 30.** Enforcement action in this matter may include penalties of up to \$100 for each day it is late and revocation of your authority to provide telecommunications services in Washington.

If the commission receives your report postmarked no later than May 30, commission staff will not seek a fine or move to revoke your registration.

Annual report forms are available on the commission's Web site at [www.utc.wa.gov](http://www.utc.wa.gov). If you have questions or require additional information, please contact Sheri Hoyt, Compliance Investigator, at (360) 664-1149 or [shoyt@utc.wa.gov](mailto:shoyt@utc.wa.gov).

Sincerely,



Carole J. Washburn  
Executive Secretary

Attachment B



April 29, 2008

Washington Utilities and Transportation Commission  
1300 S Evergreen Park Drive SW  
Olympia, WA 98504

RECEIVED  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
2008 MAY -1 AM 9:31

Dear Sirs,

Please be advised that OrbitCom, Inc. purchased the assets of One Eighty Networks, Inc on November 21, 2007. I have enclosed a copy of the bill of sale from the Purchase Agreement. One Eighty Networks will continue doing business in the state of Washington under the assumed business name of One Eighty Networks, a division of OrbitCom, Inc. and is filing its annual report under the name of OrbitCom, Inc.

A handwritten signature in cursive script that reads "Heidi R Solem".

Heidi R Solem  
Controller  
OrbitCom, Inc.