

September 7, 2012

David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. Yak Communications (America) Inc.*
Commission Staff's Response to Application for Mitigation of Penalties
Docket UT-121025

Dear Mr. Danner:

On August 1, 2012, the Washington Utilities and Transportation Commission issued a \$900 Mitigated Penalty Assessment in Docket UT-121025 against Yak Communications (America) Inc. (Yak Communications) for 21 violations of Washington Administrative Code (WAC) 480-120-382, which requires competitively classified telecommunications companies to furnish annual reports to the commission no later than May 1 each year.

On August 14, 2012¹, Yak Communications wrote the commission requesting mitigation of penalties (Mitigation Request). In its Mitigation Request, Yak Communications does not dispute the violations occurred. The company states, "Company is no longer providing service in Washington due to no volume."

Yak Communications filed its incomplete annual report on April 30, 2012. The report was missing the company's income statement and balance sheet. The company filed the income statement and balance sheet on May 25, 2012.

A company that went out of business during the prior year but did not cancel its UTC-issued permit or registration is not required to file an annual report or pay a regulatory fee. According to Yak Communications 2011 annual report information, which was provided by the company itself, Yak Communications had a total gross intrastate operating revenue of \$1,894 in 2011. This shows that Yak Communications did provide service in the state of Washington during 2011. Therefore, the company is subject to penalties. If Yak Communications wishes to cease operating in the state of Washington, it must submit a voluntary cancellation form, as required by WAC 480-120-148 and WAC 480-120-083, which notifies the commission it no longer intends to retain authority. Yak Communications must notify its customers if it intends to cancel its authority.

¹ See attachment A for a copy of Yak Communications Mitigation Request received by the commission on August 14, 2012.

It is the company's responsibility to ensure that the regulatory fee and the annual report are filed by the May 1 deadline. On February 29, 2012², Annual Report forms and Regulatory Fee packets were mailed to all regulated household goods carriers. In addition to other information, the cover letter informed the regulated company it must complete the annual report form, pay any regulatory fees and return the material by May 1, 2012, to avoid enforcement action. The letter also stated a company may file a written request for an extension, however the request must be filed with the UTC by April 24, 2012, and must state a valid reason for why the extension is needed along with the date the report will be filed. The company did not file a request for an extension. On May 15, 2012³, the commission mailed a letter to those companies that had not yet filed an annual report notifying them that, to date, they had incurred a penalty of \$900. The letter went on to explain that companies who filed their annual reports no later than May 25, 2012, would receive mitigated penalties of \$25 per day, with an additional \$25 per day for each instance in the previous five years that the company received a penalty for filing a late report.

Yak Communications' annual report was submitted 24 days past the deadline of May 1, 2012, making the company liable for a penalty of up to \$2,400. The commission nevertheless exercised its discretion and assessed a penalty of \$900 against Yak Communications, based on the number of business days the company's filing was late, rather than on the basis of calendar days. The commission, as a courtesy mails each company an annual report form and regulatory fee sheet. Staff believes that the \$900 penalty assessed is a reasonable punitive measure to impose for the company's continued violations of WAC 480-120-382.

Staff does not support mitigating the assessed penalty as the penalty has already been reduced and because Yak Communications has continued violations of WAC 480-120-382.

If you have any questions, please contact Mathew Perkinson, Compliance Investigator, at (360) 664-1105, or at mperkinson@utc.wa.gov.

Sincerely,

Sharon Wallace, Assistant Director
Consumer Protection and Communications

² See attachment B for a copy of the letter sent to all regulated companies on February 29, 2012.

³ See attachment C for a copy of the enforcement letter sent to the company on May 15, 2012.

Attachment A

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT UT-121025

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

RECEIVED

[] 1. **Payment of penalty.** I admit that the violations occurred. I have:

AUG 14 2012

[] Enclosed \$900 in payment of the penalty

WASH. UT. & TP COMM

[] Submitted my payment of \$900 online at www.utc.wa.gov. My confirmation number is _____.

[] 2. **Request for a hearing.** I believe that one or more of the alleged violations did not occur, based on the following information, and request a hearing, which is a process that allows an affected person to present argument to an administrative law judge for a decision by an administrative law judge:

2012 AUG 14 AM 8:12
FINANCIAL SERVICES

RECEIVED

[X] 3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reason(s) set out below.

Company is no longer providing service in Washington due to no volume.

[] a) I ask for a hearing for a decision by an administrative law judge based on the information presented above.

OR [X] b) I waive a hearing and ask for an administrative decision on the information I present directly above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: Aug 8, 2012 [month/day/year], at Miami Beach, FL [city, state]

Charles Zwebner
Name of Respondent (company) - please print

[Signature]
Signature of Applicant

STATE OF WASHINGTON
UTIL. AND TRANSPORTATION
COMMISSION

2012 AUG 14 PM 8:04

RECEIVED
GENERAL MANAGEMENT

RCW 9A.72.020:

"Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony."

Attachment 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, 2012

Dear Regulated Company:

Reference: Your 2011 Annual Report and 2012 Regulatory Fees are due May 1

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 you?

By May 1, you must:

- Complete and file one paper copy or electronic version of the enclosed 2011 annual report form
- Pay your 2012 regulatory fees

What happens if you do not file a completed annual report and pay regulatory fees on time?

If you do not file your company's completed annual report and pay the regulatory fees by May 1, the UTC will assess a financial penalty of \$100 for each business day after May 1 that the report is not filed and \$100 for each business day after May 1 the fees are unpaid. You may seek mitigation of the penalties in response to the assessment you receive, after you have filed a completed annual report and paid your regulatory fees. The amount of the penalties the UTC mitigates, if any, will depend on the reasons you were late and whether you have filed late in prior years. If you have not filed your completed annual report or paid your regulatory fees by June 1, 2012, Staff will initiate proceedings to have the UTC revoke your authority to operate in Washington.

What happens if you do not pay the regulatory fees by May 1?

If you do not pay your company's regulatory fees 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. These amounts apply in addition to the assessment of a penalty of \$100 per business day after May 1 that the fees are unpaid.

May you request an extension of time if you are unable to file the annual report or pay your regulatory fees on time?

You may file a written request for an extension to file your completed annual report, but the UTC will not extend the deadline for paying regulatory fees. Any extension request must be filed with the UTC by April 24, 2012, and must state a valid reason for why you need an extension and identify a specific date by which you will file your completed annual report. The UTC will notify you by May 1 whether your request is approved or denied. Even if your request



is approved, you will still be liable for penalties and interest payments if you fail to pay your regulatory fees by May 1.

What should you do if your company is no longer operating in Washington?

You may cancel your registration or permit by using the cancellation forms available on our website (see below), but if your company operated in Washington at any time during the 2011 calendar year, you must pay regulatory fees and file a closing annual report based on the months of operation during 2011 even if you cancel your registration or permit.

May you designate any information in your annual report as confidential?

Yes, but if you satisfy two conditions:

- (1) You are eligible to request confidential treatment only if your company is regulated under Title 80 RCW, that is, if you operate an electric, natural gas, telecommunications or water company. Transportation companies, regulated under Title 81 RCW, may not request confidential treatment of documents because the authority for such treatment is found only in RCW 80.04.095. If a Title 81 company files its annual report or fee sheet as confidential, the UTC will not treat it as confidential.
- (2) You must follow the steps for filing confidential documents in WAC 480-07-160. You may find this rule at the UTC website, www.utc.wa.gov/annual_reports.

Please note: The regulatory fee sheet portion of your report is not a confidential document and will not be accorded confidential treatment under the rule. The UTC will not, however, disclose credit card information you list on the fee sheet.

May you perform some of these tasks online?

Yes. You may complete the following tasks from the annual reports page at the UTC website www.utc.wa.gov/annualreports:

- Obtain electronic versions of annual report forms
- Pay regulatory fees
- File your report electronically
- Cancel your registration (telecommunications companies) or permit (transportation companies) if your company ceased operations in 2011.

Where do you mail the completed annual report form and regulatory fee payment?

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

Is there any additional information you should file?

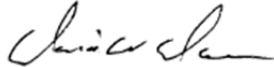
- If you are a gas distribution company, please also file both a paper and electronic copy of your Federal Energy Regulatory Commission Form 2.
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- If you are an electric company, please also file both a paper and electronic copy of your Federal Energy Regulatory Commission Form 1.
- If you are a class 1 Railroad, please also file a copy of your Surface Transportation Board Form R-1 - including statistics specific to the state of Washington.

If you have questions about any aspect of your report or regulatory fee, please contact Rae Lynn Carnes at (360) 664-1152 or rcarnes@utc.wa.gov.

If you need this letter or an annual report form in an alternate format, please call 360-664-1243. The TTY Toll-Free phone number is 1-800-416-5289.

Sincerely,



David W. Danner
Executive Director and Secretary

Enclosures

Attachment C



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

May 15, 2012

NOTICE OF ENFORCMENT ACTION

Attention:

Your 2011 annual report to the Utilities and Transportation Commission (commission) was due on May 1, as required by law. Financial penalties of \$100 per day began accruing on May 2. **As of the date of this letter, you have accrued a penalty of \$900.** That penalty will increase by \$100 per day for each subsequent day you fail to comply.

This letter tells you what you can do to mitigate your penalty.

If the commission receives your report **postmarked no later than May 25**, commission staff will mitigate your penalty to \$25 per day. Additional penalties of \$25 per day will be added for each year you have filed late in the past five years, up to a maximum of \$100 per day.

Annual report forms are available on the commission's website at www.utc.wa.gov. If you have questions or require additional information, please contact Mathew Perkinson, Compliance Investigator, at (360) 664-1105 or mperkinson@utc.wa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "David W. Danner".

David W. Danner
Executive Director and Secretary