



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • www.utc.wa.gov

June 20, 2014

Steven V. King, Executive Director and Secretary
Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. American Phone Services, Corporation*

Commission Staff's Response to Application for Mitigation of Penalties UT-140865

Dear Mr. King:

On May 30, 2014, the Utilities and Transportation Commission issued a \$600 Penalty Assessment in Docket UT-140865 against American Phone Services, Corporation for 6 violations of Washington Administrative Code (WAC) 480-120-382, which requires telecommunications companies to furnish annual reports to the commission no later than May 1 each year.¹

On June 9, 2014, American Phone Services, Corporation wrote the commission requesting mitigation of penalties (Mitigation Request).² In its Mitigation Request American Phone Services, Corporation does not dispute that the violation occurred. The company states, "Due to an unfortunate situation, during the e-file submission of the Annual report, the financial documentation was omitted." The statement continues, "Since APS is now current with its Annual Report and Financial obligations, and has put additional measures in place to prevent this from reoccurring in the future..."

It is the company's responsibility to ensure that the regulatory fee is paid and the annual report is filed by the May 1 deadline. On February 28, 2014, Annual Report packets were mailed to all regulated telecommunication companies. The instructions for annual report completion page of the annual report informed the regulated company that it must complete the annual report form, pay the regulatory fees, and return the materials by May 1, 2014, to avoid enforcement action.

¹See attachment A for a copy of the penalty assessment sent on May 30, 2014

²See attachment B for a copy of American Phone Services' Mitigation Request received on June 9, 2014

On April 30, 2014 American Phone Services, Corporation filed an incomplete annual report via e-file submission #512. On May 9, 2014 American Phone Services, Corporation filed its completed annual report with no regulatory fee due. The company has been active since May 30, 2000. American Phone Services, Corporation was previously delinquent in filing its annual report in 2006. Staff supports the company's request for mitigation. Staff recommends a reduced penalty of \$25 per day for a total penalty assessment of \$150.

If you have any questions regarding this recommendation, please contact Amy Andrews, Regulatory Analyst, at (360) 664-1157, or aandrews@utc.wa.gov.

Sincerely,

Sondra Walsh, Director
Administrative Services

¹See attachment A for a copy of the penalty assessment sent on May 30, 2014

²See attachment B for a copy of American Phone Services' Mitigation Request received on June 9, 2014

ATTACHMENT A

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: UT-140865
PENALTY AMOUNT: \$600

American Phone Services, Corporation
308 Maxwell Road, Suite 100
Alpharetta, GA 30004

According to Washington Utilities and Transportation Commission (Commission) records, you have violated Washington Administrative Code (WAC) 480-120-382, which requires telecommunications companies to file their annual reports and pay regulatory fees each year by May 1. You did not file an annual report or pay regulatory fees by May 1, 2014.

Revised Code of Washington (RCW) 80.04.080 authorizes the Commission to assess penalties of \$100 for violations of Commission rules. Each violation is a separate and distinct offense and, in the case of a continuing violation, every day's continuance is a separate and distinct violation. The Commission interprets noncompliance with WAC 480-120-382 beyond May 1 as a continuing violation, and assesses penalties of \$100 for each day a company fails to file its report or pay its regulatory fees after that date.

As a result, the Commission has assessed penalties against you in the amount of \$600 on the following basis:

On February 28, 2014, the Commission mailed the 2013 annual report forms and the 2014 regulatory fee packets to all telecommunications companies registered in Washington. The instructions page for the annual report form instructed these companies to file annual reports and pay regulatory fees by May 1, 2014. The instructions page also stated that failure to file the annual report by May 1 would result in penalties. The deadline for requesting an extension to file your annual report was April 17. You did not request an extension.

On May 9, 2014, American Phone Services, Corporation filed its 2013 annual report and paid its 2014 regulatory fee. May 9 is 6 business days from May 1, resulting in a total penalty of \$600.

Your penalty is due and payable now. If you believe the violation did not occur, you may request a hearing to contest the penalty assessment. The Commission will grant that request only if material issues of law or fact require consideration of evidence and resolution in a hearing. A request for a hearing must include a written statement of the reasons supporting that request.

¹See attachment A for a copy of the penalty assessment sent on May 30, 2014

²See attachment B for a copy of American Phone Services' Mitigation Request received on June 9, 2014

Failure to provide such a statement will result in denial of the request. If there is a reason for the violation that you think should excuse or reduce the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. A request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW80.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Request a hearing to contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection, which may file suit in state court to collect the penalty. The Commission may also initiate proceedings under WAC 480-121-060 to revoke your authority to provide telecommunications services in Washington.

DATED at Olympia, Washington, and effective May 30, 2014.

GREGORY J. KOPTA
Administrative Law Judge

¹See attachment A for a copy of the penalty assessment sent on May 30, 2014

²See attachment B for a copy of American Phone Services' Mitigation Request received on June 9, 2014

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT UT-140865

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.

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

Enclosed \$_____ in payment of the penalty

Submitted my payment of \$_____ 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, for the reasons I describe below, and I request a hearing based on those reasons for a decision by an administrative law judge:

3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reasons set out below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide 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: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

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.”

¹See attachment A for a copy of the penalty assessment sent on May 30, 2014

²See attachment B for a copy of American Phone Services’ Mitigation Request received on June 9, 2014

ATTACHMENT B



June 5, 2014

Attn: Washington Utilities and transportation Commission

RE: Penalty assessment: UT-140865.
American Phone Services, Corp

To the Commission,

We are writing this letter respectfully requesting to reconsider the good standing of our company with the commission and, if possible, waive or reduce the amount of the penalty.

Our company submitted the annual report with the commission through the e-file system in a timely manner, on 4/30/2014. Due to an unfortunate situation, during the e-file submission of the Annual report, the financial documentation was omitted.

On 5/6/2014 APS received mailed correspondence from the commission stating that our submission was missing the financials reports. We call the commission the very same day inquiring what the necessary steps to upload our financials were.

We were told to just resubmit the financials through the portal, which we promptly did.

During our conversation with the staff member we inquired about the possibility to keep our documentation confidential; it was suggested to send another copy of our financial document redacted. On 5/9/2014 we uploaded the redacted financials documentation through the portal.

Since APS is now current with its Annual Report and Financial obligations, and has put additional measures in place to prevent this from reoccurring in the future, APS respectfully requests that in reviewing our case the Commission takes into account both the small size of APS' business in Washington and the proactive efforts it took to bring itself into compliance once the matter was brought to our attention. We understand the Commission has the authority to assess administrative penalties for infractions of its Rules, and every day's continuance is a separate and distinct violation.

We request that after careful consideration of the gravity of the infraction, and the timeliness of the response, the Commission will be lenient in dismissing what, if any, penalty should be assessed.

Sincerely,

Riccardo Ferranti
American Phone Services, Corp.
President

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¹See attachment A for a copy of the penalty assessment sent on May 30, 2014

²See attachment B for a copy of American Phone Services' Mitigation Request received on June 9, 2014

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT UT-140865

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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.

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

[] Enclosed \$ _____ in payment of the penalty

[] Submitted my payment of \$ _____ 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, for the reasons I describe below, and I request a hearing based on those reasons for a decision by an administrative law judge:

[X] 3. Application for mitigation. I admit the violations, but I believe that the penalty should be reduced for the reasons set out below:

[] a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR [X] b) I ask for a Commission decision based solely on the information I provide 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: 6/5/2014 [month/day/year], at ALPHARETTA, GA [city, state]

RICCARDO FERRANTI
Name of Respondent (company) - please print

Signature of Applicant

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."

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