



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](http://www.utc.wa.gov)

July 11, 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. Telmex USA, LLC*

Commission Staff's Response to Application for Mitigation of Penalties UT-140923

Dear Mr. King:

On June 3, 2014, the Utilities and Transportation Commission issued a \$1,000 Penalty Assessment in Docket UT-140923 against Telmex USA, LLC for 10 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.<sup>1</sup>

On July 3, 2014, Telmex USA, LLC wrote the commission requesting mitigation of penalties (Mitigation Request).<sup>2</sup> In its Mitigation Request Telmex USA, LLC does not dispute that the violation occurred. The company states, "Our long-time regulatory consultant – who was a sole practitioner – had not been working since the beginning of the year due to personal reasons and recently passed away. As a result, Corporate Counsel was handling all our company's regulatory filings single-handedly while working to re-organize this function. My full intention was to remit the 2013 form on time but when we realized that a report was due; we completed it immediately and sent it off."

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.

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<sup>1</sup>See attachment A for a copy of the penalty assessment sent on June 3, 2014

<sup>2</sup>See attachment B for a copy of Telmex USA's Mitigation Request received on July 3, 2014

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On May 16, 2014 Telmex USA, LLC filed its completed annual report with no regulatory fees due. The company has been active since May 16, 2005. Telmex USA, LLC was previously delinquent in filing the 2005, 2007, 2009 and 2011 year annual reports.

Staff does not support the company's request to abate the penalty assessment due to prior violations of WAC 480-120-382. Despite Telmex USA, LLC's history of non-compliance with the timely filing of the annual report, staff does support the company's request mitigate the penalty due to the compelling circumstances provided in its written statement. Staff recommends mitigation of the penalty to \$25 per day for a total assessed penalty of \$250.

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

Sincerely,

Sondra Walsh, Director  
Administrative Services

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<sup>1</sup>See attachment A for a copy of the penalty assessment sent on June 3, 2014

<sup>2</sup>See attachment B for a copy of Telmex USA's Mitigation Request received on July 3, 2014

## ATTACHMENT A

### WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: UT-140923  
PENALTY AMOUNT: \$1,000

Telmex USA, LLC  
3350 SW 148 Avenue, Suite 400  
Miramar, FL 33027

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 \$1,000 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.

As of May 15, 2014, Telmex USA, LLC has not filed its 2013 annual report or paid its 2014 regulatory fee. May 15 is 10 business days from May 1, resulting in a total penalty of \$1,000.

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.

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<sup>1</sup>See attachment A for a copy of the penalty assessment sent on June 3, 2014

<sup>2</sup>See attachment B for a copy of Telmex USA's Mitigation Request received on July 3, 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 June 3, 2014.

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DENNIS J. MOSS  
Administrative Law Judge

<sup>1</sup>See attachment A for a copy of the penalty assessment sent on June 3, 2014

<sup>2</sup>See attachment B for a copy of Telmex USA's Mitigation Request received on July 3, 2014

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT UT-140923

**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](http://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.”

<sup>1</sup>See attachment A for a copy of the penalty assessment sent on June 3, 2014

<sup>2</sup>See attachment B for a copy of Telmex USA’s Mitigation Request received on July 3, 2014

ATTACHMENT B



**Telmex USA, L.L.C.**  
3350 SW 148 Avenue  
Suite 400  
Miramar, FL 33027  
Phone: (954) 517 7300  
Fax: (954) 517 7305

July 2, 2014

Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, WA 98504-7250

RE: Penalty Assessment: UT -140923

Dear Judge Moss,


I am writing to you in response to the \$1,000 penalty fee assessed to Telmex USA, L.L.C. by the Washington Utilities and Transportation Commission on June 3, 2014.

Indeed the 2013 Annual report was received on May 16, 2014 via email and we sincerely regret that it arrived fifteen (15) days late but respectfully request that the Commission take into account extenuating circumstances in this isolated case and consider granting us an abatement of this assessment.

Our long-time regulatory consultant – who was a sole practitioner – had not been working since the beginning of the year due to personal reasons and has recently passed away. As a result, Corporate Counsel was handling all our company’s regulatory filings single-handedly while working to re-organize this function. My full intention was to remit the 2013 form on time but when we realized that a report was due; we completed it immediately and sent it off.

In summary, I recognize that the form was already overdue when it was sent, but I hope that this letter serves to explain the unique circumstance that we have been working under for the past few months. We request that mitigation be extended from the Commission and hope that the good faith efforts that were made in order for to get the report in as timely a manner as possible are measured. To that end, I hope you will consider an abatement of the assessment.

Respectfully,

  
Oyebope Oyewale-Smith  
Contract & Compliance Specialist

2014 JUL -3 AM 9:07

**TELMEX USA, L.L.C.**  
**CONFIDENTIAL AND PROPRIETARY**

<sup>1</sup>See attachment A for a copy of the penalty assessment sent on June 3, 2014

<sup>2</sup>See attachment B for a copy of Telmex USA’s Mitigation Request received on July 3, 2014

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT UT-140923

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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.

2014 JUL -3 AM 9:07

[ ] 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: 7/2/14 [month/day/year], at Miramar FL [city, state]

Ayebimpe Ayewale-Smith (Telmex USA, LLC)  
Name of Respondent (company) – please print

*Ayebimpe Ayewale-Smith*  
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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