



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

September 3, 2013

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. XO Communications Services, LLC*

Commission Staff's Response to Application for Mitigation of Penalties
Docket UT-130866

Dear Mr. King:

On August 2, 2013, the Utilities and Transportation Commission issued a \$175 Penalty Assessment in Docket UT-130866 against XO Communications Services, LLC for seven 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 7, 2013, XO Communications LLC wrote the commission requesting mitigation of penalties (Mitigation Request). In its Mitigation Request, XO Communications Services, LLC does not dispute that the violation occurred.² The company states, "XO filed its annual report on April 29, 2013 with the full regulatory fee payment before the May 1, 2013 due date. Unfortunately, our parent company's financial information was erroneously excluded. Upon notification of the error, the information was expeditiously provided. XO has a long-standing history of filing its complete annual report on time and requests that this mitigation be granted."

¹ See attachment A for a copy of the penalty assessment sent on Aug. 2, 2013

² See attachment B for a copy of XO Communications Services LLC's Mitigation Request received by the commission on June 10, 2013.

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 March 1, 2013, Annual Report forms and Regulatory Fee packets were mailed to all regulated telecommunications companies.³ The cover letter informed the regulated company that it must complete the annual report form, pay the regulatory fees, and return the materials by May 1, 2013, to avoid enforcement action.

On May 10, 2013, 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 \$700.⁴ The letter went on to explain that companies who filed their annual reports no later than May 24, 2013, would receive mitigated penalties of \$25 per day. An additional penalty of \$25 per day would be assessed for each instance in the previous five years that the company received a penalty for filing a late report, up to a maximum of \$100 per day.

XO Communications Services, LLC filed an incomplete annual report on April 30, 2013. Staff notified the company that the report was incomplete. XO Communications Services, LLC filed its complete annual report on May 10, 2013, which is seven days past the deadline of May 1, 2013. The penalty was mitigated from \$100 per day to \$25 per day, for a total of \$175. Because the company has not presented any new or compelling information, staff does not support further mitigation.

If you have any questions regarding this recommendation, please contact Lauren McCloy, Compliance Investigator, at (360) 664-1108, or lmccloy@utc.wa.gov.

Sincerely,



Sharon Wallace, Assistant Director
Consumer Protection and Communications

³ See attachment C for a copy of the letter sent to all regulated companies dated Feb. 28, 2013

⁴ See attachment D for a copy of the enforcement letter sent to the company on May 10, 2013

ATTACHMENT A

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: UT-130866
PENALTY AMOUNT: \$175

XO Communications Services, LLC
13865 Sunrise Valley Dr.
Herndon, VA 20171

According to the Washington Utilities and Transportation Commission (Commission) records, you have violated Washington Administrative Code (WAC) 480-120-382, which requires telecommunications companies to file 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, 2013.

Revised Code of Washington (RCW) 80.04.405 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 hereby notifies you that it has assessed penalties against you in the amount of \$175 on the following basis:

On March 1, 2013, the Commission mailed 2012 annual report forms and 2013 regulatory fee packets to all telecommunications companies registered in Washington state. A letter from the Commission's Acting Executive Director Steven V. King instructed these companies to file annual reports and pay regulatory fees by May 1, 2013. The letter stated that failure to file the annual report by May 1 would result in penalties, and possible cancellation of the company's authority to operate in Washington. The deadline for requesting an extension to file your annual report was April 24. You did not request an extension.

On May 10, the Commission issued a notice to companies that had not yet filed their annual report or paid regulatory fees, informing these companies that they were subject to enforcement action, including penalties that began accruing on May 2. Companies that filed their annual reports and paid regulatory fees after May 1, but on or before May 24, 2013, are subject to penalties that the Commission uses its discretion to mitigate to \$25 per day if the company had not filed late in prior years. Companies that were late in prior years are subject to an additional \$25 per day for each year they were late, up to a total of \$100 per day.

For first-time late filers who filed their report after May 24, the Commission will mitigate the penalties to 50 percent of the maximum amount. No further mitigation will be granted unless the company provides new information that is unrelated to these factors. Mitigation will not be granted on the basis that a company was unaware that a report must be filed.

On April 30, 2013, XO Communications Services, LLC, filed an incomplete 2012 annual report and paid its 2013 regulatory fee. Staff notified the company that its annual report was incomplete. On May 10, 2013, XO Communications Services, LLC, filed its complete 2012 annual report. That date is seven business days from May 1, when penalties began to accrue, resulting in a potential penalty assessment of \$700. XO Communications Services, LLC, has not previously missed the deadline for filing its annual report and paying its regulatory fees. The Commission, therefore, exercises its discretion to mitigate the penalty to \$25 per day, resulting in a total penalty of \$175.

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. If there is a reason for the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty. See RCW 80.04.405.

You have the right to present your request for review or mitigation at a hearing, but you are not required to do so. If you do, the Commission will review the evidence supporting your request in an informal hearing, called a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider your plea and 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.

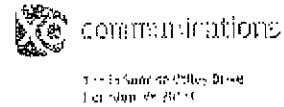
Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, within FIFTEEN (15) days after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission will then sue you to collect the penalty.

DATED at Olympia, Washington, and effective August 2, 2013.

GREGORY J. KOPTA
Administrative Law Judge

ATTACHMENT B



VIA OVERNIGHT DELIVERY AND EMAIL

June 7, 2013

Mr. Steven King, Acting Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive, SW
Olympia, Washington 98504-7250

Re: Notice of Enforcement Action for XO Communications Services, LLC

Dear Mr. King:

Pursuant to the letter dated May 10, 2013, regarding the above-referenced matter, XO Communications Services, LLC ("XO") hereby request total mitigation of the accrued penalty. XO filed its annual report on April 29, 2013 with the full regulatory fee payment before the May 1, 2013 due date. Unfortunately, our parent company's financial information was erroneously excluded. Upon notification of the error, the information was expeditiously provided. XO has a long-standing history of filing its complete annual report on time and requests that this mitigation be granted.

If additional information is needed or questions regarding this request, please contact the undersigned at 703-547-2615 or via email at sharon.e.adams@xo.com.

Respectfully submitted,



Sharon Adams
Senior Regulatory Analyst

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

February 28, 2013

Dear Regulated Company:

Reference: Your 2012 Annual Report and 2013 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 (commission).

What is required of you?

By May 1, you must:

- Complete and file one paper copy or electronic version of the enclosed 2012 annual report form
- Pay your 2013 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 commission will assess a financial penalty of \$100 for each business day after May 1 that the report is not filed and/or 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. Any potential mitigation of the penalty, if any, will depend on the reason it is late and whether you have filed late in prior years. Staff may also initiate proceedings to request the commission revoke your authority to operate in Washington.

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

If the commission does not receive 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; however, the commission will not extend the deadline for paying regulatory fees. Any extension request must be filed with the commission by April 24, 2013, 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 commission 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 the commission's website at www.utc.wa.gov; however, if your company operated in Washington at any time during the 2012 calendar year, you must pay regulatory fees and file a closing annual report based on the months of operation during 2012 even if you cancel your registration or permit.

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

Only 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 commission 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 on the commission website, www.utc.wa.gov/annualreports.

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 commission 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 commission website www.utc.wa.gov/annualreports.

- Obtain electronic versions of annual report forms;
- Pay regulatory fees;

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

The commission must **receive** your annual report form and regulatory fee payment on or before May 1, without regard to when you mail them. The commission will no longer consider this filing to be timely if it is postmarked on that date. If you mail the completed form and payment, therefore, you must do so sufficiently in advance for them to be delivered to the commission on or before May 1. Forms and payment the commission

UTC Annual Reports and Fees
February 28, 2013
Page 3

receives after that date will be considered late and subject to the penalties described in this notice without regard to when you mailed them.

Is there any additional information you should file?

- If you are a gas distribution company, please remember to also file both a paper and electronic copy of your Federal Energy Regulatory Commission Form 2.
- 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.

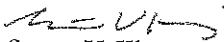
If you have questions about any aspect of your report or regulatory fee, please contact the following staff:

Rae Lynn Carnes at (360) 664-1152 or rcarnes@utc.wa.gov

Kim Anderson at (360) 664-1253 or kanderso@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,



Steven V. King
Acting Executive Director and Secretary

Enclosures

ATTACHMENT D



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) 666-8203

May 10, 2013

NOTICE OF ENFORCEMENT ACTION

Attention!

Your 2012 annual report and/or regulatory fees to the Utilities and Transportation Commission were due 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 \$700. 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 24, 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 Kali Wraspir, Consumer Program Assistant, at (360) 664-1214 or kwraspir@utc.wa.gov.

Sincerely,

Steven V. King
Acting Executive Director and Secretary