

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

COMCAST PHONE OF
WASHINGTON, LLC

Application for Mitigation of Penalties
or for Stay

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In the Matter of

COMCAST PHONE OF
WASHINGTON, LLC

Petition for an Interpretive and Policy
Statement or Declaratory Ruling

DOCKET NOS. UT-031459 and
UT-031626

COMMISSION STAFF'S
PETITION FOR
ADMINISTRATIVE REVIEW

1 Staff requests administrative review of the decision to mitigate the penalty.

Although the initial order is less than clear about the basis for the mitigation, it would appear from para. 38 that the basis is that Comcast's arguments are "less than frivolous," that Comcast "disputed the applicability of the rule in good faith," and that its arguments are "not facially untenable."

2 It is clear from the record that Comcast did not take any action before the due date of the July report, September 2, 2003, to dispute, clarify, or otherwise resolve the

difference of opinion with Staff about the applicability of the rule. Comcast met with Staff at various times to discuss the matter, but it did not bring the dispute to the Commission for resolution. Comcast was aware well before Sept. 2 of Staff's interpretation -- its correct interpretation according to the initial order -- that a filing was required, and it chose neither to comply with the rule nor seek an interpretation or exemption. Just as Staff cannot grant a company an exemption from a rule or an extension of time, a company's informal discussions with Staff should not excuse it for failure to make a formal filing with the Commission itself.

3 The initial order seeks to gloss over the significance of the penalty by suggesting that the Commission's "principal goal at this juncture is compliance on a prospective basis." Staff agrees with this, in principle, but submits that this goal is not furthered by mitigation of the penalty. To the contrary, mitigation of the penalty sends a signal to regulated companies that they need take compliance issues seriously only after deadlines are missed, multiple rounds of informal discussions are had, and months of litigation are completed. The fact that Comcast made credible, though ultimately unacceptable, arguments in the post-penalty litigation should not be a reason to mitigate the penalty that, as the Initial Order suggests, was the only thing that got Comcast's attention to compliance with Washington law.

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Staff respectfully requests that the Commission reverse the decision in the Initial Order to mitigate the penalty.

Dated this 5th day of February, 2004.

Respectfully submitted,

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