

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of,)
COMCAST PHONE OF WASHINGTON, LLC) No. UT-031459/UT-031626
) COMCAST PHONE OF WASHINGTON,
) LLC'S ANSWER TO COMMISSION
) STAFF'S PETITION FOR
) ADMINISTRATIVE REVIEW
)

Comcast Phone of Washington, LLC ("Comcast Phone") hereby answers Staff's Petition for Administrative Review.

Staff's Petition for Administrative Review unreasonably equates a good-faith disagreement over the applicability of a new rule with willful noncompliance. Distilled to its essence, Staff's Petition asks the Commission to punish parties that approach Staff with a good faith disagreement.

The Initial Order properly rejected the Staff's position on penalizing Comcast Phone, concluding that "Comcast has disputed the applicability of this rule in good faith"¹ and "Comcast had the right to dispute in good faith the applicability of WAC 480-120-439."²

Staff's Petition does not dispute these conclusions. Rather, Staff argues that the only way to get regulated companies to comply with Commission rules is to penalize them, suggesting that

¹ Initial Order, ¶ 38.

² *Id.*, ¶ 42.

Comcast Phone did not view seriously its compliance obligations and that the penalty was the only impetus for compliance.

Staff is wrong for several reasons. The first Staff argument assumes that the Commission rule applies to Comcast Phone, when the applicability of WAC 480-120-439 was unresolved. Thus, it would be wrong to penalize a company for noncompliance with a rule of uncertain applicability, so long as the company questioned its applicability in good faith, as in this case. Second, there is no evidence that Comcast Phone did not view compliance issues seriously or that the penalty was the impetus for compliance. To the contrary, the Declaration of Rhonda Weaver, dated September 29, 2003, demonstrates that Comcast Phone did review the new Commission rules to ensure company compliance (§ 3). The Declaration of Rhonda Weaver in Support of Comcast Phone's Reply also presents evidence of the company's efforts to resolve the issue of service quality reporting with the Staff and to seek the Commission's assistance in resolving the issue of the applicability of the rule to CLECs. Therefore, there is no basis for Staff's assertion that a penalty against Comcast Phone in this case is necessary for compliance reasons.

The Initial Order explained the factors it considered in finding the penalty should be mitigated; namely, Comcast Phone's good faith, the novelty of the issue to be resolved, the Staff's role in creating uncertainty over the applicability of Class A to a CLEC, and the likelihood of compliance without a penalty upon resolution of the underlying uncertainty.

The considerations above are consistent with the criteria established by the Commission for imposition of a penalty set forth in *MCI Metro Access Transmission Services, Inc. v. U.S. West Communications, Inc.*, 1999 W.L. 132851 (Feb. 10, 1999). The Staff did not follow this criteria, which warrants full penalty mitigation, when applied in this case.

For the foregoing reasons, Comcast Phone requests the Commission to deny Commission Staff's Petition for Administrative Review.

DATED this 3rd day of February 2004.

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