

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment)	DOCKET UT-120959
Against)	
)	ORDER 01
BIG RIVER TELEPHONE COMPANY,)	
LLC,)	ORDER SUSPENDING
)	PENALTY, SUBJECT TO
in the amount of \$325.00.)	CONDITION
)	
.....)	

MEMORANDUM

- 1 **Penalty.** On July 30, 2012, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$325 against Big River Telephone Company, LLC (Big River), for violations of Washington Administrative Code (WAC) 480-120-382. This rule requires competitively classified telecommunications companies to file annual reports with the Commission by May 1 each year.

- 2 On February 29, 2012, the Commission mailed Annual Report forms and Regulatory Fee packets to all regulated competitively classified telecommunications companies as required by WAC 480-120-382. On May 14, 2012, the Commission mailed a letter to companies that had not yet filed an annual report notifying them that they had incurred, as of that date, a penalty of \$800. The letter explained that companies who filed their annual reports no later than May 25, 2012, would receive mitigated penalties of \$25 per day, with an additional \$25 per day assessed for each instance in the previous five years that the company received a penalty for filing a late report.

- 3 Although Big River filed its Annual Report form on April 30, 2012, the filing was incomplete. Big River completed its 2011 annual report filing on May18, 2012. This is 17 days late, making the company liable for a penalty of up to \$1,700, as provided in RCW 80.04.405. The Commission, considering the nature of the offense and other factors, exercised its discretion to assess less than the maximum penalty. The Commission assessed a penalty of \$325.

- 4 **Mitigation Request.** On August 13, 2012, the company filed a form provided by the Commission requesting mitigation of the penalty (Mitigation Request). In its Mitigation Request, Big River does not dispute that the violation occurred. The company states:

Big River Telephone Company, LLC, filed the Annual Report by the May 1, 2012, due date. The omission of our Audited Financial Statements was simply an oversight. This was Big River Telephone Company's first offense of not filing an Annual Report complete with Financial Statements in a timely manner; therefore, we request the full penalty be waived. Thank you for the consideration.

- 5 **Commission Staff Opposition to Partial Mitigation.** Commission Staff filed a Response to the Mitigation Request on October 22, 2012. Staff opposes mitigating the assessed penalty because the penalty assessed was reduced administratively relative to the amount the Commission could have imposed.

- 6 **Commission Determination.** The Commission determines that it should grant the Mitigation Request to the extent of suspending the full \$325 penalty amount subject to the condition that Big River files its 2012 annual report by May 1, 2013. If the company fails to timely file its 2012 annual report, the suspended penalty of \$325 will become due without further action by the Commission. An additional penalty may be assessed for any late filing of the 2012 annual report.

- 7 This decision is based on Big River's apparent good faith effort to file its Annual Report on time and the fact that the company responded promptly to the Commission's May 14, 2012, letter alerting the company to the fact that its Annual Report, filed on April 30, 2012, was incomplete. The Commission's primary goal in reaching its determination is to promote future compliance. The suspended penalty supports this goal. While punishment is a secondary goal in the context of enforcement actions, no punitive measure is appropriate in this case because Big River appears to have made a good faith effort to comply in the first instance and promptly corrected its oversight when the Commission brought the matter to the company's attention.

ORDER

THE COMMISSION ORDERS THAT:

- 8 (1) The penalty of \$325 assessed against Big River, Inc., on July 30, 2012, is suspended fully subject to the condition that Big River files its 2012 annual report by May 1, 2013. If the company fails to timely file its 2012 annual report, the suspended penalty will become due without further action by the Commission.
- 9 (2) The Commission delegates to its Secretary authority to enter this Order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective October 29, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. Under WAC 480-07-904(3), you may seek Commission review of this decision. In addition to serving you a copy of the decision, the Commission will post on its Internet Web site for at least 14 days a listing of all matters delegated to the Executive Secretary for decision under WAC 480-07-904(1). You must file a request for Commission review of this order no later than fourteen (14) days after the date the decision is posted on the Commission's Web site. The Commission will schedule your request for review for consideration at a regularly scheduled open meeting. The Commission will notify you of the time and place of the open meeting at which the Commission will review the order.

The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's Web site.