

[Service Date September 26, 2012]

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment)	DOCKET UT-121025
Against)	
)	ORDER 01
YAK COMMUNICATIONS)	
(AMERICA), INC.,)	ORDER MITIGATING AND
)	PARTIALLY SUSPENDING
in the amount of \$900.00.)	PENALTY, SUBJECT TO
)	CONDITIONS
.....)	

MEMORANDUM

- 1 **Penalty.** On August 1, 2012, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$900 against Yak Communications, Inc. (Yak Communications), for violations of Washington Administrative Code (WAC) 480-120-382. This rule requires competitively classified telecommunication companies to file annual reports with the Commission by May 1 of each year.

- 2 **Background.** On February 29, 2012, the Commission mailed Annual Report forms and Regulatory Fee packets to all regulated competitively classified telecommunications companies. The Commission’s cover letter informed the regulated companies that they must complete their annual report form, pay any regulatory fees and return the material by May 1, 2012, to avoid enforcement action. The letter also related that a company could file a written request for an extension of time by April 24, 2012, stating a valid reason why it needed an extension and committing to a date by which the report would be filed. Yak Communications filed an incomplete annual report on April 30, 2012. The report was missing the company’s income statement and balance sheet.

- 3 On May 15, 2012, the Commission mailed a letter to Yak Communications and other companies that had not yet filed complete annual reports notifying them that they had incurred, as of that date, a penalty of \$900. 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.

4 Yak Communications filed its income statement and balance sheet on May 25, 2012. This completed the company's annual report filing obligation for the year.

5 **Mitigation Request.** On August 14, 2012, Yak Communications filed a Commission form requesting mitigation of penalties (Mitigation Request). In its Mitigation Request, Yak Communications does not dispute the violations occurred. The company states, "Company is no longer providing service in Washington due to no volume."

6 **Commission Staff Opposition to Mitigation.** Commission Staff filed a Response to the Mitigation Request on September 7, 2012. Staff opposes mitigating the assessed penalty because, while Yak Communications may have stopped providing service in Washington at some point in time during 2011, the company reported gross operating revenue of \$1,894 for the year, showing it did provide service in this state during 2011. Moreover, Staff relates, if Yak Communications wishes to cease operating in the state of Washington, it must submit a voluntary cancellation form, as required by WAC 480-120-148 and WAC 480-120-083, which notifies the Commission it no longer intendeds to retain authority. Yak Communications also must notify its customers if it intends to cancel its authority.

7 Staff's Response states further that:

Yak Communications' annual report was submitted 24 days past the deadline of May 1, 2012, making the company liable for a penalty of up to \$2,400. The commission nevertheless exercised its discretion and assessed a penalty of \$900 against Yak Communications, based on the number of business days the company's filing was late, rather than on the basis of calendar days. ... Staff believes that the \$900 penalty assessed is a reasonable punitive measure to impose for the company's continued violations of WAC 480-120-382.

Staff says that it does not support mitigation because "the penalty has already been reduced."

8 **Commission Determination.** Staff's statement quoted immediately above acknowledges that Yak Communications filed its complete annual report on May 25, 2012. The Commission can infer from this that Yak Communications responded to the Commission's May 15, 2012, offer of reduced penalties of \$25 per business day for companies filing or completing their reports by May 25, 2012. Considering this, and following the Commission's practice during 2012 of assessing these types of penalties on the basis of business days instead of calendar days, the penalty assessed against Yak Communications should have been \$450 (*i.e.*, 18 business days at \$25 per day), not \$900. On this basis, it is appropriate for the Commission to mitigate the penalty assessed against Yak Communications by \$450.

9 It is also appropriate to suspend a portion of the remaining penalty, subject to conditions, in order to promote compliance by Yak Communications with all requirements of law. The Commission will suspend \$300 of the \$450 penalty that is not mitigated subject to the conditions that Yak Communications take the actions required by WAC 480-120-148 and WAC 480-120-083, if it intends to cease doing business in Washington during 2012, or that the company file a letter with the Commission stating its intent to continue doing business in Washington. If Yak Communications has done, or does, business in Washington during 2012 the penalty suspension is further conditioned on the company filing its complete 2012 annual report no later than May 1, 2013.¹ If Yak Communications fails to satisfy these conditions, the suspended penalty of \$300 will be due without further action by the Commission.

10 The remaining penalty amount of \$150 that is neither mitigated nor suspended is a reasonable punitive measure to impose for the company's violation of WAC 480-120-382. The Commission will require it to be paid within 15 days after the date of this Order.

ORDER

THE COMMISSION ORDERS THAT:

11 (1) The penalty of \$900 assessed against Yak Communications, Inc., on August 1, 2012, is mitigated and reduced to \$450.

¹ If Yak Communications is required to, but fails to timely file an annual report in 2013, the company may be subject to additional penalties.

- 12 (2) The unmitigated penalty amount of \$450 is suspended to the extent of \$300, subject to the conditions stated in paragraph 9 of this Order. If the company fails to satisfy these conditions, the suspended penalty will become due and payable without further action by the Commission.
- 13 (3) The balance of the penalty assessed, \$150, is due and payable to the Commission within 15 days following the date of this Order.
- 14 (4) 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 September 26, 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.