

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

321 COMMUNICATIONS, INC.

in the amount of \$1,000

DOCKET UT-160537

ORDER 01

ORDER DENYING REQUEST FOR
HEARING; DENYING MITIGATION

BACKGROUND

- 1 On February 29, 2016, the Washington Utilities and Transportation Commission (Commission) mailed annual report and regulatory fee forms to all regulated telecommunications companies. The forms included a reminder that companies must file their annual reports and pay their regulatory fees by Monday, May 2, 2016, or face penalties of \$100 for each violation of Commission rules. In the case of continuing violations, each day's continuance is a separate violation. RCW 80.04.405.
- 2 321 Communications, Inc. (321 Communications or Company) filed an incomplete annual report on May 3, 2016, and did not make a complete filing by May 16. On June 13, the Commission assessed a penalty of \$1,000 against 321 Communications, calculated as \$100 per business day from May 2 to May 16.
- 3 On May 24, 2016, 321 Communications filed a complete annual report. The Company timely paid its regulatory fee.
- 4 On June 20, 2016, 321 Communications responded to the Commission's penalty assessment, requesting a hearing and disputing the violations. In its request, the Company stated, "Annual report filing confirmations received on May 2." The Company provided a copy of the electronic filing confirmation showing its annual report was filed on May 3.
- 5 On July 12, 2016, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for a hearing. Staff explained that the Company's initial filing failed to include Schedule 1, a balance sheet, and an income statement. Staff contacted the Company on May 4 and advised the Company that its report was incomplete. Staff further recommended the Commission deny the Company's

request for mitigation because 321 Communications has been active since 2009 and filed its annual reports late in 2013, 2014, and 2015.

DISCUSSION

6 WAC 480-120-382 requires regulated telecommunications companies to file annual reports and pay regulatory fees by May 1 of each year, or the first business day thereafter. Companies are responsible for complying with their legal obligations, and the Company should have ensured its annual report was complete when filed, particularly in light of the Company's multiple prior violations.

7 As a preliminary matter, we deny the Company's request for a hearing. The Commission's penalty assessment advised the Company that a request for hearing will only be granted if material issues of law or fact require consideration of evidence and resolution in hearing. Here, no issues of law or fact are in dispute. Commission records show that the Company's annual report was not complete until May 24, 2016. The facts, therefore, are undisputed, and the law is clear. Accordingly, the Company's request for a hearing is denied.

8 Nor is mitigation of the penalty appropriate under these circumstances. The Commission may consider a number of factors when entertaining a request for mitigation, including a company's history of compliance and the likelihood the violation will recur.¹ 321 Communications received and paid penalties of \$425, \$550, \$1,000, and \$1,000 for filing its annual reports late in 2012, 2013, 2014, and 2015, respectively. Moreover, the Company has not presented any new or compelling information that would warrant a penalty reduction. We find the \$1,000 penalty to be an appropriate incentive for the Company to ensure timely filings going forward.

ORDER

THE COMMISSION ORDERS:

9 (1) 321 Communications, Inc.'s request for a hearing is DENIED.

¹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

- 10 (2) 321 Communications, Inc.'s request for mitigation of the \$1,000 penalty is
DENIED.
- 11 (3) The \$1,000 penalty is due and payable no later than August 1, 2016.
- 12 The Secretary has been delegated authority to enter this order on behalf of the
Commissioners under WAC 480-07-904(1)(h).

DATED at Olympia, Washington, and effective July 18, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.