

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment)	DOCKET UT-120991
Against)	
)	ORDER 01
NEW HORIZONS)	
COMMUNICATIONS CORPS, INC.,)	ORDER GRANTING
)	MITIGATION
in the amount of \$1,900.)	
.....)	

MEMORANDUM

- 1 **Penalty.** On July 31, 2012, the Washington Utilities and Transportation Commission (Commission) assessed a penalty of \$1,900 against New Horizons Communications Corps. (New Horizons or Company), 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. New Horizons failed to timely file its annual report.
- 2 New Horizons filed its annual report with the Commission on May 8, 2012, but the filing was incomplete. New Horizons did not ensure it was complete until May 26, 2012.
- 3 The Commission assessed a penalty of \$100 for each business day that New Horizons was late in filing its complete annual report, for a total of \$1,900. However, the penalty assessment also contained contradictory language indicating that the Commission was mitigating the penalty to a rate of \$25 per day.
- 4 **Mitigation Request.** On August 9, 2012, New Horizons filed an Application for Mitigation on a form provided by the Commission and also provided an explanatory letter. The Company requested a hearing on its mitigation request, claiming that its penalty amount should be adjusted to \$475 consistent with the calculation in the assessment of \$25 per day for 19 days, and enclosing payment of \$475. New Horizons also asked the Commission to check its records to confirm the date of filing, as New Horizons records showed the annual report had been prepared in April and it should not have taken nearly a full month for the paperwork to arrive at the Commission.
- 5 **Commission Staff Support for Limited Mitigation.** Commission Staff filed a Response to the Company’s letter on December 4, 2012. Staff confirms that New Horizons filed its annual report late, on May 8, 2012, but that the Company had not

included its financials in the report as required. Commission records indicate that New Horizons submitted the company's balance sheet and income information on May 26, 2012. As of that date, Staff considered the Company's annual report filing obligation complete, but 19 business days past the May 1 deadline.

- 6 Staff acknowledges the language in the penalty assessment referring to a mitigated rate of \$25 per day to calculate the penalty owed but explains that this was in error. Staff does not support this mitigated rate in this instance, contending that the statutory rate of \$100 per day should apply to this Company's late filed report. Even so, Staff supports mitigating the assessed penalty from \$1,900 to \$950 because this is the first instance of late filing by this Company.
- 7 **Commission Determination.** The Commission's penalty assessment contained conflicting language that referenced two different calculation rates for the amount of the penalty. The Commission will exercise its discretion to honor the narrative language in the penalty assessment which relied on a rate of \$25 per day. The Commission determines that it should mitigate the penalty assessed against New Horizons to \$475, the amount already paid, and waive the remainder of the originally assessed penalty.
- 8 This decision is based on the Company's original attempt to file its annual report on May 8, 2012, which was only 5 business days after the deadline, and the Company's relatively prompt attention to curing the deficiencies identified in its late-filed annual report. Further, when New Horizons requested mitigation, the Company included payment in full for the amount due according to the conflicting narrative language in the notice. Finally, this is a first instance of New Horizons failing to timely file its annual report.
- 9 New Horizons' Application for Mitigation asked for a hearing and a decision by an administrative law judge based on information submitted by the Company. In this instance, the Commission finds that no hearing is necessary because the relief sought in the Application for Mitigation (adjusting the penalty to \$475) is already being granted to the Company. To the extent that New Horizons seeks a hearing on the issue of when the Commission received the Company's annual report, the Commission's records referenced above are dispositive on the date of receipt of filings made with the Commission, and conducting a hearing on that issue could provide no further benefit.

ORDER

THE COMMISSION ORDERS THAT:

- 10 (1) The penalty of \$1,900 assessed against New Horizons Communications
Corps., is mitigated to \$475. The remaining \$1,425 of the penalty originally
assessed is waived.
- 11 (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 December 11, 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.