

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

NW FIBER, LLC,

Respondent.

DOCKET UT-220774

ORDER 01

PREHEARING CONFERENCE
ORDER; DEFAULT ORDER

BACKGROUND

- 1 **Procedural History.** On November 7, 2022, the Washington Utilities and Transportation Commission (Commission) issued a Complaint; and Notice of Prehearing Conference set for Thursday, November 30, 2022, at 1:30 p.m. (Complaint). The Complaint alleges that NW Fiber, LLC, (NW Fiber or Company) violated 47 U.S.C. § 214(e)(1) by failing to advertise and provide common carrier services supported by federal universal service support mechanisms throughout the territory for which it received designation as an Eligible Telecommunications Carrier (ETC) because the Company has voluntarily dissolved and can no longer advertise or provide those services. The Complaint requested that the Commission revoke NW Fiber’s designation as an ETC per WAC 480-123-050.¹
- 2 **Conference.** The Commission convened a virtual prehearing conference (PHC) in this docket on November 30, 2022, before Administrative Law Judge Gregory J. Kopta. Commission staff (Staff) was the only party who appeared at the PHC. Staff moved for default pursuant to RCW 34.05.440(2) and WAC 480-07-450.
- 3 RCW 34.05.440(2) allows the presiding officer discretion to enter a “default or other dispositive order” if a party fails to appear at the hearing. Based on the failure of NW Fiber to appear, the Administrative Law Judge granted Commission Staff’s request to enter a default order.

¹ WAC 480-123-050 provides that the Commission may, after notice and an opportunity to be heard, “revoke . . . a designation” as an ETC “if it determines that the ETC has failed to comply with the requirements of 47 U.S.C. Sec. 214(e)(1) or any other conditions imposed by the [C]ommission.”

4 **Default Initial Order.** The Commission finds NW Fiber in default pursuant to RCW 34.05.440(2) and WAC 480-07-450(1).

5 **Appearances.** Jeff Roberson, Assistant Attorney General, Lacey, Washington, represents Commission Staff.²

DISCUSSION

6 The Complaint includes a notice that any party who fails to attend or participate in the hearing may be held in default in accordance with the terms of RCW 34.05.440 and WAC 480-07-450. RCW 34.05.440(2) provides: “If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding ... the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.” WAC 480-07-450(1) provides that that the Commission may find a party in default if the party fails to appear at the time and place set for a hearing.

7 The Commission electronically served NW Fiber with the Complaint on November 7, 2022, 23 days in advance of the PHC. NW Fiber thus was given due and proper notice of the time and place set for hearing. NW Fiber did not appear at the PHC and is therefore held in default. As a result, the Commission accepts the allegations in the Complaint as true and grants the requested relief of revocation of the Company’s ETC designation.

8 WAC 480-07-450(2) provides that: “A party who is dismissed from a proceeding or found in default may contest the order of dismissal or default by written motion filed within ten days after service of the order. A dismissed party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process.” A notice appearing at the end of this order provides instructions for filing such a notice with the Commission.

FINDINGS AND CONCLUSIONS

9 (1) The Commission is an agency of the State of Washington vested by statute with authority to regulate telecommunications companies in Washington.

² In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- 10 (2) The Commission has jurisdiction over the subject matter of this proceeding and over NW Fiber.
- 11 (3) NW Fiber had adequate notice of the hearing in this docket on November 30, 2022, and did not appear or otherwise respond to that notice. Pursuant to RCW 34.05.440(2), therefore, NW Fiber should be held in default.
- 12 (4) The Commission should revoke NW Fiber's ETC designation.

ORDER

THE COMMISSION ORDERS:

- 13 (1) The Commission holds NW Fiber, LLC, in default. Should NW Fiber, LLC, fail to respond to this Order by filing a written motion within ten (10) days requesting that the Commission vacate the Order pursuant to WAC 480-07-450(2), the default in this proceeding shall remain in place.
- 14 (2) The Commission revokes NW Fiber, LLC's designation as an Eligible Telecommunications Carrier in the state of Washington.
- 15 (3) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

Dated at Lacey, Washington, and effective December 8, 2022.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Gregory J. Kopta
GREGORY J. KOPTA
Administrative Law Judge

NOTICE TO PARTIES

This is an initial order. The action proposed in this initial order is not yet effective. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this initial order, and you would like the order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-450(2) states that a party held in default has 10 days after service of a default order to file a written motion requesting the order be vacated and the proceeding reopened for further process. The party held in default must state the grounds relied upon, including its reasons for failing to appear.

WAC 480-07-825(2)(a) provides that any party to this proceeding has 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file an answer (Answer) to a Petition within 10 days after service of the petition.

A party held in default must file a written motion requesting the order be vacated pursuant to WAC 480-07-450(2) within 10 days after service in order to have the Commission consider a Petition for Administrative Review from that party.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3) provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5).