

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the)	DOCKET NO. UT-003013
)	
)	
)	THIRTIETH SUPPLEMENTAL
Continued Costing and Pricing of)	ORDER; PREHEARING ORDER
Unbundled Network Elements,)	ACCEPTING WORLDCOM'S
Transport, and Termination)	LATE-FILED MOTIONS AND
)	IMPOSING MONETARY
.....)	PENALTY

1 **SYNOPSIS.** This Order addresses WorldCom, Inc.'s ("WorldCom"), failure to comply with the Commission's filing and service requirements, and the company's submission of an erroneous certificate of service attached to its late-filed motions.

BACKGROUND

2 WorldCom, Inc., requested, on March 13, 2002, that the deadline for filing motions be extended to March 18, 2002, in order to thoroughly review and evaluate rebuttal testimony recently filed by Qwest Corporation ("Qwest"). Qwest requested a similar extension of the deadline for filing answers to March 27, 2002. The Commission on March 14, 2002, served a notice to the parties granting the requests for extension of time ("Notice"). The Commission's Notice stated that parties may "fax file and serve motions and answers, provided that paper copies are filed and served on the next business day." Additionally, the Commission encouraged parties to provide all other parties and the presiding officer electronic versions of filings via email attachment, in addition to filing an electronic version along with paper copies.

3 WorldCom on March 18, 2002, sent an email to other parties and the Commission's Record Center explaining that electronic versions of WorldCom's Motion to Compel Demonstrations and Motion to File Surrebuttal Testimony were attached for filing, and that paper copies would be delivered via US mail. Certain exhibits to WorldCom's Motion to Compel Demonstrations were excluded from the attachments.

4 WorldCom did not timely file and serve its motions as required by the Commission's Notice. The Commission on March 20, 2002, requested comments from parties regarding whether the Commission should reject WorldCom's documents for failure to comply with the Commission's requirements.

5 An original and copies of WorldCom's motions were delivered to the Commission via courier service on March 20, 2002. WorldCom also filed a Certificate of Service

dated March 18, 2002, certifying that a true and correct copy of the company's motions were served to persons listed in the Certificate by fax and U.S. Mail.

6 On March 22, 2002, comments were filed by WorldCom, Qwest Corporation ("Qwest"), and Commission Staff.

DISCUSSION AND DECISION

7 WorldCom admits that it failed to properly file and serve its motions as directed by the Commission. WorldCom states that it e-mailed its motions and sent them overnight to the Commission. Although our main concern is the Company's defective late filing and service of its motions, we also note that the actual delivery of documents to the Commission for filing does not comport with representations in the company's Certificate of Service and comments that these documents were designated for overnight delivery.

8 Parties must serve documents by delivering one copy to each other party in accordance with WAC 480-09-120. Although provisions for service by electronic mail are stated in subsection (d) of that rule, no party in this proceeding has filed the written consent necessary to waive their right to other forms of service. Thus, WorldCom's actions constitute a violation of the Commission's rules, in addition to a violation of the Commission's Notice.

9 Parties are required to file a valid certificate of service with every pleading pursuant to WAC 480-09-120 (1)(d) and (2)(f). The certificate constitutes evidence that service of a pleading has been made upon all parties to a proceeding. The certificate requires that the person serving the document specify the authorized method of service and sign the certificate. The requirement of a separate signature reflects the seriousness of the act and establishes a standard for judicial (or quasi-judicial) reliance on the certificate. Parties must not regard the preparation of a certificate of service as a perfunctory task. WorldCom's failure to attach a valid certificate to its motions adds to the procedural confusion regarding service of these pleadings, and also constitutes a violation of Commission rules.

10 WorldCom states that its failure to comply with the Commission's filing requirements was an isolated unintentional oversight, and that the company has implemented procedures to prevent it from reoccurring. WorldCom argues that the Commission's judgment should be guided by WAC 480-09-425(4):

The Commission will construe pleadings liberally with a view to effect justice among the parties. The Commission will, at every stage of any proceeding, disregard errors or defects in the pleadings or proceedings that do not affect the substantial rights of the parties.

- 11 WorldCom does not believe that any party was prejudiced by its actions, and the company requests that, unless some party alleges and demonstrates a substantial prejudice of its rights, the Commission not reject the motions.
- 12 Qwest acknowledges that parties, on occasion, require additional flexibility regarding Commission deadlines, but contends that the Commission's deadlines would be meaningless if parties are permitted, without excuse or penalty, to disregard these procedural requirements. Qwest argues that no other remedy or sanction other than rejection will preserve parties' incentive to comply with the Commission's procedural requirements.
- 13 Staff advocates that the Commission consider the motions on their merits, and not reject the filings due to procedural technicalities. Staff points out that WorldCom's Motion to Compel clearly identified the attachments which were not transmitted electronically, and that Qwest – the party most likely to be impacted by the motions – was in possession of those documents. Staff thus concludes that WorldCom's failure to comply with Commission requirements does not prejudice other parties.
- 14 Staff also points out that if the Commission believes that WorldCom should be sanctioned or penalized for not meeting filing and service requirements, then the Commission may impose an appropriate monetary penalty under RCW 80.04.380.
- 15 RCW 80.04.380 states, in relevant part:
- Every public service company . . . shall comply with every order, rule, direction or requirement made by the Commission under authority of this title, so long as the same shall be and remain in force. Any public service company . . . which fails . . . to . . . comply with any . . . requirement of the Commission shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense.
- 16 We agree with Staff's assessment that Qwest – in particular – has not been prejudiced by WorldCom's failure to comply with filing and service requirements. WorldCom's Motion to Compel clearly identified the attachments which were not transmitted, and Qwest was in possession of those documents. There were no attachments to WorldCom's Motion to File Surrebuttal Testimony. Qwest echoes the Commission's concern that parties respect and comply with procedural requirements, but there is no showing in this instance that the substantial rights of other parties have been affected by WorldCom's lapse. Consequently, we do not reject WorldCom's motions, and parties must file answers to the motions according to the schedule that has been established. Although WorldCom's failure to comply with the Commission's procedural requirements do not affect the substantial rights of other parties, we also find that imposition of a monetary penalty is appropriate.

- 17 The Commission's procedural requirements are necessary to ensure that all parties are afforded their right to due process under the law, and that no party is unfairly prejudiced during the course of a proceeding. When a party fails to comply with those procedural requirements, the consequence – in most instances – is that an inquiry is triggered in order to protect the rights of all parties. As often is the case, the handling of WorldCom's nonconforming filing and the inquiry necessitated by the company's failure to comply with the Commission's procedural requirements have been time consuming and burdensome. Failure to comply with such requirements is becoming more frequent, and the burdens more problematic for the Commission and its administrative staff. WorldCom's failure is an isolated but a serious violation.
- 18 WorldCom is authorized to provide telecommunications services to the public in the state of Washington, and is a public service company as defined by RCW 80.04.010.
- 19 The penalty provided for in RCW 80.04.380 is applicable to each and every offense, and every violation of an order, rule, direction or requirement constitutes a separate and distinct offense. In this case, WorldCom filed two separate motions, each of which violated the filing and service requirements of the Commission's Notice and WAC 480-09-120.¹ However, for purposes of this review, we regard all of the company's actions as a single violation.
- 20 The Commission notes that WorldCom has routinely complied with the Commission's requirements in this proceeding, and we accept WorldCom's representation that the company has implemented procedures to prevent a similar violation from reoccurring. On balance, we find that a penalty of \$500.00 best reflects the seriousness of the consequences and the need to provide an incentive for future compliance. Accordingly, WorldCom must submit a penalty payment in the sum of \$500.00 to the Commission within 30 days of this Order.

DATED at Olympia, Washington, and effective this 26th day of March, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LAWRENCE J. BERG
Administrative Law Judge

¹ In addition to the four separate violations for WorldCom's failure to properly file and serve its two motions, WorldCom's submission of a false certificate of service also constitutes a separate violation.

NOTICE TO PARTIES: Any aggrieved party may petition for review of this interlocutory order pursuant to WAC 480-09-760(2). Any such petition must be filed with the Commission and served on other parties within ten (10) days after entry of this order. Answers must be filed and served within ten (10) days after the petition is filed.