

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment Against	DOCKET UT-170483
SILV COMMUNICATIONS, INC.	ORDER 01
in the amount of \$1,000	GRANTING MITIGATION TO \$200

BACKGROUND

- 1 On February 28, 2017, the Washington Utilities and Transportation Commission (Commission) mailed annual report and regulatory fee forms to all telecommunications companies. The forms included a reminder that companies must file their annual reports and pay their regulatory fees by May 1, 2017, 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 Silv Communications, Inc. (Silv or Company) filed an incomplete annual report on April 26, 2017, and had not made a complete filing by May 15. On June 28, 2017, the Commission assessed a penalty of \$1,000 against Silv, calculated as \$100 per business day from May 1 to May 15.
- 3 On July 7, 2017, Silv filed a complete annual report. On July 11, the Company responded to the Commission's penalty assessment, admitting the violations and requesting mitigation based on the written information provided. In its response, the Company states, "We have no record of any contact as listed coming from you – May 1 from the Commission. Recently found out by Commission Staff Mr. Bennett that yahoo doesn't deliver emails from the state of WA." The Company further explained that it has created a new email account and provided its updated contact information to the Commission.
- 4 On August 2, 2017, Commission staff (Staff) filed a response recommending the Commission grant the Company's request for mitigation, in part. Staff recently verified that Yahoo email accounts do not deliver messages sent from the Commission. Accordingly, regulated companies with Yahoo email accounts did not receive any notification from Staff that their reports were incomplete. Because Silv did not have an opportunity to correct the violations at an earlier date, Staff supports the Company's

request for mitigation and recommends the Commission assess a reduced penalty of \$200 based on Staff's assumption that the Company would have likely corrected the deficiencies within two business days.

DISCUSSION

5 WAC 480-120-382 requires telecommunications companies to file annual reports by May 1 of each year. Companies are responsible for complying with their legal obligations, and the Company should have ensured its annual report was complete when initially filed.

6 We nevertheless agree with Staff that mitigation of the penalty is appropriate in these circumstances. The penalty assessment advised the Company that a request for mitigation will only be granted if the violations occurred due to circumstances beyond its control.¹ Here, Staff attempted to notify the Company via email that its annual report filing was incomplete. Unbeknownst to the Company, its Yahoo email account was unable to receive communications from the Commission. As such, Silv was not given the same opportunity as similarly situated companies that received email notifications to correct its violations prior to accruing the maximum penalty. Staff's recommendation to assess a \$200 penalty for two violations of WAC 480-120-382 is a reasonable approximation of the timeframe in which the Company would have likely corrected the violations had it received Staff's email. Accordingly, we find that the violations at issue occurred due to circumstances beyond Silv's control, and conclude that the Commission should assess a reduced penalty of \$200.

¹ Those circumstances include, but are not limited to: death or serious illness of the person responsible for filing the report, or a member of that person's immediate family; destruction by fire or other casualty of the company's place of business or business records; or an act of fraud, embezzlement, theft, or conversion on the part of an employee. Circumstances that do not qualify as an acceptable basis for requesting mitigation include: financial hardship; a misunderstanding or lack of knowledge of Commission rules; failure to receive an annual report form from the Commission; mistakes or misconduct on the part of an employee; employee termination or turnover; personal events such as weddings or graduation ceremonies; and vacations or business trips.

ORDER

THE COMMISSION ORDERS:

- 7 (1) Silv Communications, Inc.'s request for mitigation of the \$1,000 penalty is
GRANTED, in part, and the penalty is reduced to \$200.
- 8 (2) The \$200 penalty is due and payable no later than September 20.
- 9 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 September 6, 2017.

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.