

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

PENALTY ASSESSMENT AGAINST
TEL WEST COMMUNICATIONS, LLC,
in the amount of \$143,100.00

DOCKET NO. UT-040572

DECLARATION OF
BETTY YOUNG

BETTY YOUNG, under penalty of perjury under the laws of the state of Washington, declares as follows:

1. I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
2. I am employed by the Washington Utilities and Transportation Commission (Commission) as a Compliance Specialist in the Business Practices Investigations Section. I have been employed at the Commission for approximately 5 years, holding various positions. As a Compliance Specialist, my responsibilities include conducting investigations regarding the business practices of regulated utility or transportation companies. As part of those duties, I investigate registered telecommunications companies that may be operating in violation of Commission statute, rule, order, tariff, or price list.
3. On July 9, 2004, Tel West Communications, Inc. (Tel West), filed with the Commission an Application for Mitigation of Penalties (Mitigation Request) in Docket No. UT-040572. I have read the Mitigation Request, including all attached exhibits and declarations.
4. This Mitigation Request arises from a Notice of Penalties Incurred and Due for Violations of Laws, Rules and Regulations issued by the Commission on June 23, 2004, in Docket No. UT-040572. In that Notice, the Commission issued penalties of \$103,400 for 1,034 violations of WAC 480-120-147(5) for failure to obtain proper verification before placing a preferred carrier freeze on a customer's local service. Also in that Notice, the Commission issued additional penalties of

\$39,700 for 397 violations of WAC 480-120-166 for failure to respond timely to Commission-referred complaints. In total, the Commission issued penalties of \$143,100.

5. Before recommending the Commission issue penalties, as part of my job, I conducted an investigation into Tel West's practices pertaining to preferred carrier freezes and responding to Commission-referred complaints. My investigation resulted in a Staff report titled "Staff Investigation into the Business Practices of Tel West Communications, LLC" in Docket No. UT-040572. A true and accurate copy of that report is attached as Exhibit A.
6. I sent a copy of Staff's Investigation Report in Docket UT-040572 to Tel West through its counsel, Richard Busch, and its Director for Carrier Relations and Regulatory Affairs, Donald Taylor, by electronic mail on May 14, 2004.
7. Vicki Elliott, the Commission's Assistant Director for Consumer Affairs, and I met with Mr. Busch and Mr. Taylor on May 20, 2004. In that meeting, Ms. Elliott and I discussed the report with Mr. Busch and Mr. Taylor, explaining what the violations were and why the company incurred them. While Mr. Busch and Mr. Taylor were unhappy with the violations, they did not appear to be confused by the use of terminology in the report, what actions caused the violations, or Staff's conclusion that the violations actually occurred. Their questions and concerns centered around the recommendations Staff might make as a result of the report and resulting violations.
8. On June 2, 2004, I provided a revised copy of the Investigation Report to Mr. Busch and Mr. Taylor by electronic mail. I revised the report to add Footnote 2 on page 10 of the report, based on the May 20, 2004, meeting with Mr. Busch and Mr. Taylor.
9. The violations in this case arose in part from informal complaints filed by customers with the Commission and addressed by the Commission's Consumer Affairs Staff. Specifically, the informal complaints gave rise to the response to Commission-referred complaint violations and some of the preferred carrier freeze violations.
10. Violations regarding the preferred carrier freeze also arose from information provided by Tel West in response to Staff's request for additional information outside of the context of a specific informal complaint. Specifically, in March 2004, Staff requested a list of all new Tel West customers from September 1, 2003,

and information regarding whether Tel West placed a line freeze on the new customers' accounts. If a line freeze was placed on the accounts, Staff requested proof of the customers' authorization.¹

Authorization and Verification

11. Although Tel West asserts that it was confused during the resolution of informal complaints regarding preferred carrier freezes,² Tel West never indicated its confusion to Staff.
12. Tel West claims its confusion was caused by its managers "[knowing] that Tel West did receive the customers' authorization to implement the line freeze."³ However, Tel West at no time stated to Staff that it received the customers' authorization for the line freezes. To the contrary, Tel West acknowledged that authorization or verification did not exist in response to a number of informal complaints. For example, Tel West made the following statements:
 - a. "We do not have any documentation regarding the LEC freeze authorization." (Complaint #84496).
 - b. "We don't have any record of this customer authorization." (Complaint #84532).
 - c. "Tel West has no documentation regarding the local service freeze on this particular customer's account." (Complaint #86385).
 - d. "This was a customer who had signed up prior to TelWest updating their Verification process adding the PIC Freeze acknowledgement." (Complaint #86836).
 - e. "This customer signed up before TelWest had made the addition to it's TPV script informing the customer of the PIC Freeze" (Complaint #86904).
 - f. "This customer was signed up for service prior to our TPV script being updated to add the acknowledgment of the PIC freeze." (Complaint #87032).
 - g. "We do not have documentation for this request from the customer." (Complaint #84971).
 - h. "I do not have a copy of the carrier freeze notification." (Complaint #87487).
 - i. "Tel West does not have a copy of the customer's agreeing to the line freeze on file." (Complaint #87474).

¹ Exhibit A at 9.

² Mitigation Request at 3.

³ Mitigation Request at 3.

- j. "We do not have copy of authorization of the line freeze on this account." (Complaint #87687).
 - k. "Tel West does not have a copy of the notification of the line freeze." (Complaint #87717).
 - l. "I am advising Tel West to revise its TPV script to solicit a positive response from the customer regarding the freeze." (Complaint #87418).
13. A true and accurate copy of the informal complaints received by the Commission is attached to this declaration as Exhibit B. The complaints are listed in numerical order. A summary of the complaints in which Tel West demonstrated its lack of confusion is attached to this declaration as Exhibit C.

Number of Penalties

14. When Consumer Affairs Staff cites violations of WAC 480-120-166 in an informal complaint, the number of alleged violations does not necessarily reflect the actual number of days a response is late. The purpose of citing violations within an informal complaint is to provide technical assistance to a company by pointing out the areas in which a company does not comply with statute, rule, order, or tariff.
15. The Commission is authorized to assess penalties for each day a company is not in compliance. Staff informed Tel West of the potential for continuing violations on numerous occasions in the context of the informal complaints. Exhibit D to this declaration contains a summary of the instances in which Staff informed Tel West about continuing violations. The complete text of the complaints summarized is contained in Exhibit B.

Harm to Customers

16. Tel West, in its Mitigation Request, states that, "Tel West's conduct did not have a serious impact upon its customers . . ." ⁴ Staff disagrees.
17. In at least 32 of the 77 informal complaints filed with the Commission between July 2003 and April 2004, customers stated they did not know the preferred carrier freeze existed, had never authorized the freeze, and had no idea how to remove the freeze. Exhibit E to this declaration contains a summary of the

⁴ Mitigation Request at 10.

complaints in which customers contacted the Commission regarding preferred carrier freezes. The full text of the complaints is contained in Exhibit B.

18. A review of the third party verification files provided by Tel West in response to Staff's March 2004 request revealed many more violations regarding preferred carrier freezes.
19. The harm to consumers as a result of Tel West's practices is difficult to measure. However, the customers for whom Tel West placed a preferred carrier freeze on their accounts without authorization were held captive, rather than enjoying the ability to choose freely in a competitive market. Some customers were unable to migrate to another carrier for months due to the unauthorized freezes. See, for example, Complaint #88214.⁵
20. WAC 480-120-147, and the parallel federal rules, are important to prevent abuses by telecommunications companies of the preferred carrier freezes.

Specific Complaints Addressed by Tel West in its Mitigation Request

21. Tel West requests the number of violations associated with Complaint #85585 be reduced by 33.⁶ Tel West states that it did not receive the e-mail message sent by Staff on September 26, 2003, and that it responded to Staff on the day the e-mail message was received. Although the Complaint supports this claim,⁷ the violations should be reduced by four, not 33. Staff documented 93 violations associated with Complaint #85585 for four separate requests for information.⁸ Tel West received four violations for not responding to the request made on September 26, 2003.⁹
22. Tel West also argues that it responded to Staff's October 14, 2003 e-mail message in Complaint #85585 on October 28, 2003. Staff has no record of a response from the Company on October 28, 2003.
23. Tel West requests the number of violations associated with Complaint #86836 be reduced by one, stating that the wrong Tel West contact received the Complaint

⁵ Exhibit B at 129-134.

⁶ Mitigation Request at 7.

⁷ Exhibit B at 25-32.

⁸ Exhibit A at 14.

⁹ *Id.*

and the correct contact responded within the required time after receiving the Complaint.¹⁰ The Complaint supports this claim.¹¹

24. Tel West requests the violations associated with Complaint #87418 be reduced by 2 and the violations associated with Complaint #87843 be reduced by 1.¹² Tel West asserts that the complaints in both cases were filed by Qwest. Staff does not accept complaints filed by a company on behalf of a customer. Review of the complaint files in each case reveals that both complaints were filed by customers, not Qwest.¹³
25. Tel West requests the violations associated with Complaint #87759 be reduced by seven.¹⁴ Tel West asserts that Staff did not request additional information in its e-mail dated March 12, 2004. Staff's email stated: "I listened to the TPV again. I did NOT hear the consumer authorize Tel West to place a local line freeze on the account in accordance with WUTC rules."¹⁵ Staff's message was in response to an e-mail message from Tel West stating that the customer in question provided authorization during the third party verification process.¹⁶ Although Staff does not explicitly request information, placed in context, Staff's March 12, 2004 e-mail was a request for information. Additionally, Staff twice contacted Tel West on March 19, 2004, and March 26, 2004, requesting a response to the March 12, 2004 e-mail.¹⁷ Tel West responded with information on March 29, 2004.
26. Tel West requests the number of violations associated with Complaint #87670 be reduced by 28.¹⁸ Tel West asserts that it provided information on February 11, 2004, and Staff had the software necessary to access the information. The violations associated with Complaint #87670 arose for a lack of response, not for the format in which sound files were provided.¹⁹
27. Tel West requests the number of violations associated with Complaint #88017 be reduced by 6, stating that Staff requested a favor for the customer involved

¹⁰ Mitigation Request at 7.

¹¹ Exhibit B at 37-39.

¹² Mitigation Request at 7.

¹³ Exhibit B at 48-50 and 94-95.

¹⁴ Mitigation Request at 7-8.

¹⁵ Exhibit B at 91.

¹⁶ Exhibit B at 91.

¹⁷ Exhibit B at 91.

¹⁸ Mitigation Request at 8.

¹⁹ Exhibit B at 75-78.

rather than information from the Company. Staff's e-mail message dated March 12, 2004, requested information regarding how Tel West was willing to resolve the informal complaint.²⁰ This is a request for information. Tel West responded on March 25, 2004, after Staff again asked for the information.

DATED this 4th day of August 2004, at Olympia, Washington.

BETTY YOUNG

²⁰ Exhibit B at 102.