

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of	)	DOCKET NOS. UT-031459 and
	)	UT-031626
COMCAST PHONE OF)	
WASHINGTON, LLC	)	ORDER NO. 01
)	
Application for Mitigation of	)	ORDER CONSOLIDATING
Penalties or for Stay	)	PROCEEDINGS AND
.....	)	DENYING PETITION FOR AN
In the Matter of	)	INTERPRETIVE AND POLICY
	)	STATEMENT OR A
COMCAST PHONE OF	)	DECLARATORY RULING
WASHINGTON, LLC)	
	)	NOTICE OF PREHEARING
Petition for an Interpretive and Policy	)	CONFERENCE
Statement or Declaratory Ruling	)	(Set for November 17, 2003)
.....)	

1 **PROCEEDINGS:** This Order addresses procedural matters in Docket Nos. UT-031459 and UT-031626 and commences an adjudicative proceeding under RCW 34.05.413 via the included Notice of Prehearing Conference.

2 Docket No. UT-031459 concerns a Penalty Assessment against Comcast Phone of Washington, LLC d/b/a Comcast Digital Phone. The Commission entered its Penalty Assessment in the amount of \$1,000, pursuant to RCW 80.04.405, on September 12, 2003. The basis for the penalty is described in the Penalty Assessment as follows:

- (a) Comcast Phone of Washington, LLC (Comcast), is a Class A company under Chapter 480-120 Washington Administrative Code.

- (b) WAC 480-120-439 requires that each Class A company file monthly reports on its service quality performance. The reports are due thirty days after the end of the month in which the activity reported on takes place. WAC 480-120-439 became effective on July 1, 2003.
- (c) The service quality performance report for performance during the month of July 2003 was due on September 2, 2003, which is the first business day after August 30, 2003. Comcast has not filed this report as of the date of this penalty assessment, September 12, 2003.
- (d) Comcast's failure to file the required report is in apparent violation of WAC 480-120-439. Comcast has failed to file the report for 10 days. Each day constitutes a separate violation. Such conduct supports a penalty in the amount of \$1000, to date.

Comcast filed its "Application for Mitigation of Penalties or for Stay Pending Resolution of Petition for Interpretive and Policy Statement or Declaratory Order" on September 30, 2003. Commission Staff filed its Response on October 20, 2003.

3 Docket No. UT-031626 concerns Comcast's "Petition for an Interpretive and Policy Statement or a Declaratory Ruling That WAC 480-120-439 Does Not Apply to Comcast Phone of Washington, LLC, or an Order Granting Exemptions from Reporting Regulations," filed on October 2, 2003. The Petition raises issues concerning the interpretation and application of parts of chapter 480-120 WAC, including WAC 480-120-439.

4 **CONSOLIDATION:** Docket Nos. UT-031459 and UT-031626 involve common issues of fact, policy, and law. The Commission finds, on its own motion, that it is appropriate to consolidate these proceedings. *WAC 480-09-610.*

5 **PROCESS AND NOTICE OF PREHEARING CONFERENCE:** The Commission will initiate an adjudicative proceeding in the Penalty Assessment docket to consider the issues raised by the pleadings in both Docket Nos. UT-031459 and UT-031626. This will include consideration of whether WAC 480-120-439 applies to Comcast and, if so, whether the Commission should grant a full or partial waiver. The Commission will also consider whether its Penalty Assessment should be wholly or partially mitigated.

6 **PETITION FOR INTERPRETIVE AND POLICY STATEMENT OR A DECLARATORY ORDER:** The Commission finds that an adjudicative proceeding is the best procedural option because it will permit all of the pending issues to be resolved in a single proceeding, ensuring that all parties are afforded the full extent of their due process rights. It follows that neither an interpretive and policy statement proceeding under WAC 480-09-200, nor a declaratory order proceeding under WAC 480-09-230, is required. Comcast's Petition in Docket No. UT-031626 is denied to the extent it requests these alternative processes. We, however, do not dismiss Docket No. UT-031626 because, as stated above, we will consider in this proceeding Comcast's alternative request for relief in the form of a waiver, if WAC 480-120-439 is determined to apply to Comcast.

7 **PETITIONS FOR INTERVENTION:**¹ To facilitate process discussions, the Commission asks that petitions to intervene be made in writing, filed no later than **November 12, 2003**. Any objection to a petition to intervene will be heard at the prehearing conference that is noticed below. The time and place for evidentiary hearing will be set at the prehearing conference, or by later written notice.

¹ The Commission notes receipt of Qwest's letter in Docket No. UT-031626 stating the company's view that it would be a necessary party to any declaratory order proceeding. Given that no declaratory order proceeding will be conducted, Qwest will need to file a petition to intervene in these consolidated dockets, if the company wishes to be considered for party status.

8 **NOTICE IS HEREBY GIVEN That a prehearing conference in this matter will be held on Monday, November 17, 2003, at 10:00 a.m., in Room 206 Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. Appearances will be taken.**

9 NOTICE IS FURTHER GIVEN THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET BY THIS NOTICE, OR ANY OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH RCW 34.05.440. THE PARTIES ARE FURTHER ADVISED THAT THE SANCTION PROVISIONS OF WAC 480-09-700(4) ARE SPECIFICALLY INVOKED.

10 The purpose of the prehearing conference is to consider further formulating the issues in the proceeding, and to determine other matters to aid in its disposition, as specified in WAC 480-09-460. Any petitions to intervene will be considered during the prehearing conference.

11 If any party or witness needs an interpreter or other assistance, please fill out the form attached to this notice and return it to the Commission.

12 The names and mailing addresses of all parties and their known representatives are as follows:

Applicant: Comcast Phone of Washington, LLC
440 Yauger Way S.W.
Olympia, WA 98502-8153

Representative: Judith A. Endejan
Graham & Dunn PC
Pier 70, 2801 Alaskan Way, Suite 300
Seattle, WA 98121-1128
(206) 624-8300

Commission: Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Representative: Shannon Smith
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1192

Public Counsel: Simon J. ffitc
Public Counsel
Office of the Attorney General
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

- 13 The Commission designates Dennis J. Moss, Administrative Law Judge, Washington Utilities and Transportation Commission Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, to preside at the prehearing conference.
- 14 The Public Counsel section of the Office of the Attorney General has been designated by the Attorney General to represent the public. The address of the Commission, shown below, may be used for inquiries of Public Counsel, or Public Counsel may be contacted directly by writing or calling the address or telephone number listed below.
- 15 Notice of any other procedural phase will be given in writing or on the record as the Commission may deem appropriate during the course of this proceeding.

Dated at Olympia, Washington and effective this 24th day of October, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

NOTICE

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: Carole J. Washburn, 1300 S. Evergreen Park Drive SW, P. O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket No.: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired (Yes) _____ (No) _____

Do you need a certified sign language interpreter:

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (____) _____