

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty)	DOCKET UT-140925
Assessment Against)	
)	ORDER 01
TSS DIGITAL SERVICES, INC.)	
)	INITIAL ORDER GRANTING
)	MITIGATION
In the Amount of \$1,000)	
.....)	

1 **Background.** Washington law requires regulated telecommunications companies to file annual reports and pay regulatory fees by May 1 of each year. WAC 480-120-382. On February 28, 2014, the Washington Utilities and Transportation Commission (Commission) mailed annual report and regulatory fee forms to all regulated telecommunications companies. The forms included a reminder that companies must file their annual reports and pay their regulatory fees by May 1, 2014, 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 **Procedural History.** TSS Digital Services, Inc. (TSS Digital or Company) did not file its annual report on May 1, 2014, and had not made a complete filing by May 15. On June 3, the Commission issued a penalty assessment against TSS Digital in the amount of \$1,000, calculated as \$100 per business day between May 1 and May 15.

3 On June 6, 2014, TSS Digital filed with the Commission a request for hearing. The Company explained that it provides VoIP only services, and therefore believes it should not owe any regulatory fees to the Commission.

4 **Hearing.** Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission determined that a brief adjudicative proceeding was appropriate for determining whether the penalty should be mitigated and what actions might be necessary to ensure that TSS Digital complies with its regulatory obligations. On July 28, 2014, the Commission issued a Notice of Brief Adjudicative Proceeding and set August 26, 2014, at 9:30 a.m. as the time for the parties to make oral statements concerning their positions.

5 **Evidence.** At hearing, the Company’s Chief Technology Officer, Thomas Ellis, explained that the Company attempted to file its annual report on April 30 through the Commission’s website. Mr. Ellis testified that he believed the report was complete until he was notified by Commission Staff (Staff) that financial information was missing for a portion of the 2013 calendar year. Mr. Ellis stated that in the past, the Company’s financial information for its corporate year, which ends September 30, has been accepted without consequence. Mr. Ellis acknowledged several late filed reports in previous years due to staffing issues.

6 Staff opposed TSS Digital’s request for mitigation due to the Company’s late filed reports in 2007, 2008, and 2012.

7 Following the hearing, the Company filed its completed annual report on August 28, 2014.

8 **Decision.** Despite Staff’s recommendation, the Commission finds mitigation to be appropriate in this case. Mr. Ellis took responsibility for his company’s late filing, and testified credibly that he believed the report was properly filed on April 30.

9 The Commission may consider a number of factors when entertaining a request for mitigation, including a company’s history of compliance, whether the violation was promptly corrected, and the likelihood the violation will recur.¹ The Company received and paid a \$275 penalty for violations of WAC 480-120-382 in 2012, and received and paid a \$100 and \$200 penalty for those same violations in 2007 and 2008, respectively. The Company has since cured the violations at issue here by submitting its completed annual report after receiving clarification from Staff.

10 Mr. Ellis testified credibly at hearing that he believed the filing made on April 30 was complete, and provided assurances of complete and timely filings going forward. Accordingly, we will exercise our discretion to reduce the penalty to \$500, nearly twice the amount assessed in 2012. While denying mitigation is appropriate when a company with previous violations makes no effort to comply, to do so here would be unduly punitive given the Company’s good faith effort to file its annual report on

¹ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

April 30, and its sincere belief it had done so. The Company is cautioned, however, that future late filings will not be eligible for mitigation absent extenuating circumstances.

- 11 The penalty assessed against TSS Digital is therefore recalculated at a rate of \$50 per day for the 10 business days the company was late in filing its complete annual report. This results in a revised penalty in the amount of \$500.

ORDER

THE COMMISSION ORDERS:

- 12 (1) The \$1,000 penalty assessed against TSS Digital Services, Inc. is mitigated to \$500.
- 13 (2) The penalty is due and payable no later than September 16, 2014.

DATED at Olympia, Washington, and effective September 2, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
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 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of 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. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

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.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **one** copy of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250