

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

In the Matter of the Penalty	)	DOCKET UT-090440
Assessment Against	)	(Consolidated)
)	
CORDIA COMMUNICATIONS	)	ORDER 02
CORP.,)	
	)	ORDER GRANTING, IN PART,
in the Amount of \$2,700	)	PETITION FOR MITIGATION,
	)	SUBJECT TO CONDITION
)	
.....)	
In the Matter of the Penalty	)	DOCKET UT-090441
Assessment Against	)	(Consolidated)
)	
NORTHSTAR TELECOM, INC,	)	ORDER 02
)	
in the Amount of \$18,000)	
	)	ORDER GRANTING, IN PART,
	)	PETITION FOR MITIGATION,
	)	SUBJECT TO CONDITION
)	
.....)	

BACKGROUND

1 **Penalty Assessments.** On April 20, 2009, the Washington Utilities and Transportation Commission (Commission)¹ entered a Notice of Penalty Assessment against Cordia Communications Corp. (Cordia) for 27 violations of the Commission’s rules. Specifically, the Commission alleged two violations of WAC 480-120-166(6) which requires a telecommunications company to report the results of its investigation of service-affecting informal complaints to Commission Staff within two business

¹ In formal proceedings, such as this, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding ALJ, and the Commissioners’ policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455*.

days from the date Commission Staff passes the complaint to the company. The Commission alleged 18 violations of WAC 480-120-166(7) which requires a telecommunications company to report the results of its investigation of nonservice-affecting informal complaints to Commission Staff within five business days from the date Commission Staff passes the complaint to the company. In addition, the Commission alleged seven violations of WAC 480-120-166(8) which requires a telecommunications company, unless another time is allowed, to provide complete responses to Commission Staff requests for additional information within three business days. Each day of noncompliance with these rules constitutes a separate violation.

- 2 On April 20, 2009, the Commission entered a Notice of Penalty Assessment against Northstar Telecom, Inc. (Northstar) alleging 180 violations of the Commission's rules. The Commission alleged four violations of WAC 480-120-166(6), 65 violations of WAC 480-120-166(7), and 111 violations of WAC 480-120-166(8).²

Petitions for Mitigation.

- 3 *Cordia Communications Corp.* On May 12, 2009, Cordia filed a petition for mitigation, admitted the violations, waived its right to a hearing, and requested that this matter be resolved on the basis of the information presented. In its mitigation request, Cordia stated that it had taken steps to ensure that all future complaints will be handled in a timely manner. Cordia stated that some of the delinquency in responding to complaints was due to problems with its Operational Support System (OSS) which is used to record consumer complaints. Complaints were formerly sorted by the date of receipt, rather than the due date, resulting in a requirement that complaints be manually reviewed. The manual review left room for error regarding deadlines. Cordia asserted that it has resolved this problem by installing an automated sort feature on its OSS to ensure that all complaints are responded to in a timely fashion.
- 4 Moreover, Cordia has reorganized the department responsible for responding to complaints. The employee whose behavior was the genesis of many of the violations, Mr. Keith Applewhite, is no longer employed by Cordia. Mr. Applewhite has been

² A more complete description of what these rules require is stated in paragraph 1 of this Order.

replaced by Ms. Anna Fernandes who is aware of the response deadline for each type of complaint and who has demonstrated her ability to comply with those deadlines.

- 5 Cordia asserted that two of the violations cited in the complaint were erroneous and that the total number of violations should be 25, not 27. Cordia alleges that two of the complaints were not service-affecting and therefore the proper response time was five days, not two days. Cordia asserted that it responded to these two complaints by the appropriate due date. Eliminating these two complaints from the penalty assessment would reduce the penalty from \$2,700 to \$2,500.
- 6 Cordia requested that the total penalty assessment be reduced to \$500 in light of the remedial measures it has taken with respect to handling complaints in a timely manner. Cordia also committed to working with the Commission to promptly resolve and address all issues that arise in the future.
- 7 *Northstar Telecom, Inc.* On May 12, 2009, Northstar filed a petition for mitigation, admitted the violations, waived its right to a hearing, and requested that this matter be resolved on the basis of the information provided. In its mitigation request, Northstar also stated that it had modified its OSS to sort complaints by due date rather than receipt date to eliminate the problem of manually sorting complaints. Northstar also reorganized its department responsible for complaints and terminated the employment of Mr. Keith Applewhite, the individual who was the source of many of the violations of the Commission's rules. Mr. Applewhite was replaced with Ms. Anna Fernandes who is, as previously noted, familiar with complaint deadlines and who has demonstrated her ability to comply with those deadlines.
- 8 In light of the efforts Northstar has taken to resolve the issues in the complaint, Northstar requested that the penalty be reduced from \$18,000 to \$1,000. Moreover, while Northstar acknowledged that the number of violations may be deemed excessive, it notes that these were repeated, consecutive violations related to eight customers and that Northstar has taken action to ensure that the violations will not recur. Northstar also states that the proposed penalty would adversely affect its ability to continue operations in Washington resulting in reduced options for competitive telecommunications service in the State.

- 9 **Consolidation of Proceedings.** By Order 01, Order of Consolidation, entered May 18, 2009, the Commission consolidated these proceedings noting that in the petitions for mitigation, Cordia and Northstar provided the same street address albeit at different suites at that location, admitted violations to the same provisions of the Commission's rules; WAC 480-120-166(6), WAC 480-120-166(7), and WAC 480-120-166(8), and that the petitions for mitigation were signed by the same individual who appears to serve as general counsel for both telecommunications companies. In support of their petitions for mitigation, Cordia and Northstar cite the same problems with their OSS' that record consumer complaints and problems with the same former employee's handling of consumer complaints. The same individual also serves as general counsel for both companies. Accordingly, the Commission consolidated these cases.
- 10 **Response to Requests for Mitigation.** On May 29, 2009, the Commission Staff filed its response to the petitions for mitigation. Staff supported partial mitigation of the penalties assessed against Cordia and Northstar. Staff reviewed the two complaints that Cordia alleged were not service-affecting and thus, required a response within five days, not two. Commission Staff found that the consumer canceled his Cordia service prior to filing the complaint. Therefore, Staff agreed with Cordia that the complaint was not service affecting, and that these violations should be dismissed reducing the total number of violations from 27 to 25.
- 11 Commission Staff concurred with Cordia and Northstar that Mr. Applewhite was the main cause of the late responses to Commission complaints but asserted that the companies were and are responsible for compliance with the Commission's rules. Staff argued that reducing the total penalty amount from \$20,700 to \$1,500 does not reflect the continuing and serious nature of the violations. Staff noted that it requires timely responses to its inquiries to fulfill its regulatory duties and noted that the companies' untimely responses took place over approximately one year constituting a plain pattern of noncompliance.
- 12 Because the companies took steps to rectify the problems prior to receiving notification of Staff's investigation, Staff recommended that that the total penalty

amount be reduced by 50 percent or from \$20,700³ to \$10,250. To ascertain whether the companies continue to comply with WAC 480-120-166, Commission Staff may conduct a compliance review one year from the date this matter is concluded.

DISCUSSION AND DECISION

- 13 We address first the two violations which Cordia and Commission Staff concur should be removed from the initial penalty assessment. Both parties assert that these violations were nonservice-affecting and thus were afforded a greater response time which the company met. We grant the joint request by Cordia and Staff to dismiss the penalty assessment associated with these complaints which reduces the initial penalty assessment against Cordia from \$2,700 to \$2,500.
- 14 We next address whether it is appropriate to reduce Cordia's penalty assessment in the amount of \$2,500 and Northstar's penalty assessment in the amount of \$18,000, or a total of \$20,500. Cordia proposes that its penalty be reduced by 80 percent, or a total of \$500. Northstar proposes that its assessment be reduced by more than 97 percent, or a total of \$1,000. Staff proposes that both penalty assessments be reduced by 50 percent, or a total of \$10,250.
- 15 In support of mitigation, Cordia and Northstar cite their efforts to ensure future compliance with Commission regulations. We are not persuaded that terminating the employment of Mr. Applewhite should impact the level of penalty assessment. Cordia and Northstar are obligated to comply with Commission rules. During his employment, Mr. Applewhite acted as the agent for these companies with authority to resolve complaints on their behalf. Therefore, the companies are responsible for his actions.
- 16 We agree that it was appropriate for the companies to reconfigure their OSS to reduce the potential for human error in the calculation of complaint deadlines and to reorganize the departments responsible for addressing consumer complaints. Nonetheless, these actions to address future complaints do not reduce the seriousness

³ A 50 percent reduction of the original \$20,700 penalty assessment would result in a penalty of \$10,350. This appears to be a typographical error because Staff agrees with Cordia's request to dismiss two of the initial violations resulting in a total initial penalty assessment of \$20,500 which, reduced by 50 percent, results in a penalty of \$10,250.

of the violations at issue in this case. We expect companies to provide service to consumers in a manner that complies with all Commission rules. If consumers believe they have been aggrieved, their redress is the complaint process. The Commission has an obligation to ensure that complaints are resolved in a timely manner and adopted regulations to aid it in fulfilling its regulatory obligation. Timely resolution of complaints favors both consumers and companies because the prevailing party receives the relief to which it is entitled.

- 17 Many of the complaints at issue in this proceeding relate to allegations of “slamming” or changing a consumer’s telecommunications carrier without the consumer’s consent,⁴ improperly disconnecting telecommunications service,⁵ failing to provide refunds in a timely manner,⁶ and billing for telecommunications service after the consumer switched carriers.⁷ While not all complaints are resolved in favor of consumers, these are serious violations that have the potential of depriving consumers of their choice of telecommunications carriers, depriving consumers of telecommunications service, withholding funds to which consumers may be entitled, and unjustly enriching companies for services that were not rendered to consumers.
- 18 The nature of these complaints emphasizes the importance of resolving complaints in a timely fashion. Both Cordia and Northstar admit that they failed to resolve complaints within the time lines required by WAC 480-120-166. Moreover, these violations are not isolated incidents. The violations at issue in this case repeatedly occurred for approximately one year. This is clearly an extensive and excessive period of time and demonstrates a pattern of noncompliance with Commission rules.
- 19 The seriousness of the complaints, the importance of timely resolution of complaints, and the pattern of noncompliance with Commission rules warrants the imposition of a penalty that appropriately reflects the seriousness of this behavior. We conclude that the penalty proposed by the companies is *de minimis* and does not fulfill this purpose. We find that the penalty proposed by Staff reasonably reflects the seriousness of the companies’ actions while giving the companies credit for undertaking efforts to ensure future compliance with our rules. Accordingly, we impose a penalty of

⁴ See, for example, Complaint Nos. 103063, 103328, 103977, 104086, 104172, 104730, 102975.

⁵ See, for example, Complaint Nos. 103880 and 104799.

⁶ See, for example, Complaint Nos. 105034, 192954.

⁷ See, for example, Complaint Nos. 102704 and 104560.

\$10,250, subject to the condition that the remaining penalty of \$10, 250 be suspended for a period of one year to ensure compliance with WAC 480-120-166. If Cordia and Northstar fail to fully comply with WAC 480-120-166 for a period of one year from the date of this Order, the remaining penalty of \$10,250 may be imposed.

20 We recognize that \$10,250 may be a significant penalty for these companies to discharge in a single payment. Accordingly, we afford Cordia and Northstar the option of discharging the penalty either in a lump sum of \$10,250 due and payable on Monday, August 3, 2009, or in three equal monthly installments of \$3,416.66 each due and payable on Monday, July 6, Monday, August 3, and Tuesday, September 1, 2009. Failure to render payment in a timely manner may also result in imposition of the suspended penalty.

21 It is so ordered.

22 The Commissioners have delegated authority to the Executive Secretary to enter this Order pursuant to RCW 80.01.030 and WAC 480-07-905(1)(h).

Dated at Olympia, Washington, and effective June 19, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER
Executive Director and Secretary

NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. In addition to serving you a copy of the decision, the Commission will post on its Internet Web site for at least 14 days a listing of all matters delegated to the Executive Secretary for decision. You may seek Commission review of this decision. You must file a request for Commission review of this order no later than fourteen (14) days after the date the decision is posted on the Commission's Web site. The Commission will schedule your request for review for consideration at a regularly

scheduled open meeting. The Commission will notify you of the time and place of the open meeting at which the Commission will review the order.

The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's Web site.

This notice and review process is pursuant to the provisions of RCW 80.01.030 and WAC 480-07-904(2) and (3).