

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

In the Matter of the Penalty Assessment	)	DOCKET UT-060977
Against	)	
	)	ORDER 06
IBFA ACQUISITION COMPANY, LLC,	)	
	)	
in the Amount of \$100.00	)	ORDER DENYING MITIGATION
	)	
.....	)	

1     **Penalty:** On July 5, 2006, the Washington Utilities and Transportation Commission (Commission) assessed a penalty in the amount of \$100 against IBFA Acquisition Company, LLC, (IBFA) for one violation of WAC 480-120-382, which requires competitively classified telecommunications companies to file annual reports with the Commission no later than May 1 of each year.

2     **Petition for Mitigation:** On July 20, 2006, IBFA filed a petition for mitigation and waived a hearing. IBFA asserted that 2005 was its first year of operation and that it had no record of receiving the Annual Report packet. IBFA further asserted that its 2005 annual intrastate operating revenue was \$3,952. Given that level of revenue, IBFA argued that a \$100 penalty was excessive.

3     **Answer:** On August 2, 2006, Commission Staff filed a response to the petition for mitigation. Staff stated that IBFA was granted registration effective June 2, 2005. Staff asserted that the Annual Report packet and the penalty assessment were mailed to the same address. Therefore, if IBFA received the penalty assessment, it should have received the Annual Report packet.

4     Staff also contended that the penalty was assessed for failure to file an annual report in a timely manner. Staff stated that the penalty is independent of the revenue a company earned. Staff argued that the penalty is not excessive.

5     **Commission Decision:** The Commission denies the petition. It is undisputed that IBFA was authorized to, and actually did, provide competitive telecommunications service in the state of Washington in 2005. Thus, it is required to timely file an annual report. While 2005 was its first year of operation, it is important for

telecommunications carriers to ensure that they familiarize themselves with and comply with all applicable statutes and regulations from the onset of operations. This regulation is no exception.

6 In addition, WAC 480-120-382 provides, in pertinent part, that the “[c]ommission will distribute an annual report form . . .” In this instance, the Annual Report packet was mailed to the same address as the penalty assessment. IBFA received the penalty assessment because it seeks mitigation of the penalty. It is presumed that a document placed in the United States Postal Service is received by the addressee. The same address was used for mailing both documents. Therefore, it is reasonable to presume that both were received.

7 Moreover, the penalty assessed against IBFA is not excessive. IBFA argued that the penalty is excessive in light of the revenues earned during 2005. While WAC 480-120-382(5) regarding regulatory fees provides that fees shall be calculated as a percentage of gross intrastate operating revenue, penalties are not assessed in that manner. According to RCW 80.04.380, any public service company that fails to comply with any rule of the Commission shall be subject to a penalty not to exceed the sum of \$1000 for each and every offense. Given the fact that IBFA could have been assessed a penalty no greater than \$1000 for failure to file its annual report in a timely manner, the penalty of \$100 does not appear excessive. Accordingly, the request for penalty mitigation is denied.

8 It is so ordered.

DATED at Olympia, Washington, and effective September 19, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN  
Executive Secretary

**NOTICE TO PARTIES: This is an administrative order of the Commission pursuant to RCW 80.01.030. Judicial review may be available through a petition to the superior court judicial review under RCW 34.05.542(4), filed within 30 days after the service date of this order.**