

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

WTI, LLC,

Respondent.

DOCKET UT-080455

COMMISSION STAFF'S
MOTION FOR DEFAULT
JUDGMENT

I Washington Utilities and Transportation Commission Staff (“Staff”) makes the following motion for default judgment against WTI, LLC (“WTI”) under the authority provided by RCW 34.05.440 and WAC 480-07-450, for failure to answer or appear at the prehearing conference scheduled in this matter. This motion is also made pursuant to Order 01, Prehearing Conference Order, entered April 13, 2009 (Order 01).¹ Should the Commission find WTI in default, Staff further requests that the Commission issue an order disposing of the issues in the Complaint on the merits, and granting the relief requested in the Complaint on the uncontested evidence accompanying this motion.

I. EVIDENCE RELIED UPON

1. Declaration of Lisa Wyse, regarding service of the Commission’s Complaint and Notice of Prehearing Conference (“Complaint”), attached to this motion.
2. Declaration of Sheri Hoyt, and attached Exhibit 1 (Staff Investigation Report), attached to this motion.²

¹ See Order 01 at ¶ 7.

² Exhibit 1 is substantively identical to the Staff Investigation Report already contained in the record in this proceeding; however, errors in page numbering were discovered, and the pages have been re-numbered in this Exhibit for ease of reference.

II. AUTHORITY

2 RCW 34.05.440(2) provides that if a party fails to attend or participate in a hearing
or other stage of an adjudicative proceeding...the presiding officer may serve upon all
parties a default or other dispositive order, which shall include a statement of the grounds
for the order.

3 WAC 480-07-450(1) further provides that the Commission may find a party in
default for failure to appear at any time and place set for hearing. When the Commission
finds a party in default, it will implement the default by a written order. When a party is
found in default, the Commission's order stating that finding may also dispose of the issues
in the proceeding, as provided in RCW 34.05.440.

4 Under the Commission's service rules, WAC 480-07-150(7), service of all notices
and complaints by the Commission is deemed complete when a copy of the document is
served by mail, properly addressed with first-class postage prepaid.

III. ARGUMENT

1. Default

5 As set forth in the Declaration of Lisa Wyse, the Complaint and Notice of Prehearing
Conference scheduled for April 8, 2009, ("Complaint") was properly mailed by regular mail,
first class, postage prepaid, and by certified mail, to WTI on March 4, 2009.³ The certified
mail copy was returned "unclaimed." However, the first class mail has not been returned.⁴
The Complaint was appropriately addressed to a forwarding address for WTI, LLC,
provided on a returned certified mail copy, sent on January 30, 2009, to the WTI address on

³ See Declaration of Lisa Wyse at ¶ 3.

⁴ *Id.*

file with the Commission.⁵ The Complaint made clear that any party who fails to attend or participate in the hearing may be held in default.⁶ Under the Commission's service rules, deposit in the U.S. mail properly constitutes service. WTI did not file an answer to the Complaint and did not appear at the prehearing conference.⁷ Accordingly, the Company may be held in default, and Staff requests the Commission grant its motion for default judgment.

2. Disposition of the Issues in this Proceeding

6 As provided by WAC 480-15-450(1), Staff requests that, in conjunction with a finding of default, the Commission accept into evidence the paper record of Staff's prima facie case, accompanying this motion. At the Prehearing Conference, Staff agreed with the Administrative Law Judge's suggestion that, as an alternative to scheduling a live hearing on the merits, this would be an appropriate way to proceed to determine the issues in the proceeding, given the Company's failure to appear, or answer the Complaint.⁸ Staff requests that the Commission issue a detailed order on the basis of this record, finding that WTI committed 73 violations of Commission rules as set forth in the Complaint, and imposing a \$73,000 monetary penalty for these violations as requested in the Complaint.

7 Staff, in its Investigation Report (Exhibit 1), sponsored by the sworn Declaration of Sheri Hoyt, has thoroughly demonstrated that WTI committed 73 violations of Commission rules, as alleged in the Complaint, as follows:

⁵ *Id.*

⁶ Complaint at ¶ 46.

⁷ See Order 01 at ¶ 7.

⁸ See Order 01 at ¶ 7. See also TR 2:17-22, 3:23 – 5:13.

- Fifty-three violations of WAC 480-120-166(6) by failing to timely respond to service-affecting Commission complaints within two business days.⁹
- One violation of WAC 480-120-083(2)(a) by failing to provide any written notice to the Commission of WTI's February 10, 2008, cessation of its dial-tone telecommunications service.¹⁰
- Eight violations of WAC 480-120-083(2)(c) by failing to provide the customers identified in Commission-referred complaints with written notice at least 30 days in advance of cessation of telecommunications service.¹¹
- One violation of WAC 480-120-083(3) by failing to provide the proper written notice to the Commission of its April 15, 2008, cessation of telecommunications service.¹²
- Three violations of WAC 480-120-083(4)(c) by failing to include in its customer notices an explanation of how those customers may receive a refund on any unused service.¹³
- Seven violations of WAC 480-120-083(4)(d) by failing to properly provide a second notice to customers of cessation of telecommunications service by either completing a direct call to the customers or by providing a second written notice, as required by the rule.¹⁴

8 The Commission should impose a \$73,000 penalty. RCW 80.04.380 provides that,

“[a]ny public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe, or comply with any order, rule, or any direction, demand, or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction, or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense.”

⁹ See Declaration of Sheri Hoyt at ¶ 5.

¹⁰ *Id.* at ¶ 6.

¹¹ *Id.* at ¶ 7.

¹² *Id.* at ¶ 8.

¹³ *Id.* at ¶ 9.

¹⁴ *Id.* at ¶ 10.

9 Under RCW 80.04.380, the 73 violations carry a maximum penalty of \$73,000. Staff recommends a \$73,000 penalty, which is unrebutted and supported by ample evidence.¹⁵ Also notably, the Commission has previously assessed penalties against both WTI and a closely affiliated entity, Marathon Communications, Inc., for violations of Commission rules, including WAC 480-120-166(6).¹⁶

IV. CONCLUSION

10 For the reasons set forth above, Staff respectfully requests that the Commission grant its motion for default judgment, and issue a detailed order: (1) finding WTI in default; (2) finding WTI in violation of Commission rules as alleged in the Complaint; and (3) imposing \$73,000 in penalties on WTI.

DATED this 29th day of April, 2009.

Respectfully submitted,

ROBERT M. MCKENNA
Attorney General

MICHAEL A. FASSIO
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff

¹⁵ See Declaration of Hoyt at ¶ 11; Exhibit 1 at 12; Complaint at ¶ 42.

¹⁶ See Complaint at ¶ 9, and Exhibit 1 at pages 5-6. See also Dockets UT-070607 and UT-051509.