

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment)	DOCKET UT-121003
Against)	
)	ORDER 01
QUALITY TELEPHONE, INC.)	
)	INITIAL ORDER APPROVING
In the Amount of \$1,050)	SETTLEMENT AGREEMENT
)	SUBJECT TO CONDITION
.....)	

1 **Procedural History.** On August 1, 2012, the Washington Utilities and Transportation Commission (Commission) issued a penalty assessment against Quality Telephone, Inc. (Quality Telephone or Company) in the amount of \$1,050, alleging a violation of WAC 480-120-382, which requires competitively classified telecommunications companies to file annual reports with the Commission by May 1 each year and pay regulatory fees annually on that date.

2 On August 10, 2012, Quality Telephone filed with the Commission a request for hearing stating that it had no customers in the State of Washington and was planning on surrendering its registration prior to the end of the year. Quality Telephone further stated that its last customer was disconnected in October 2011, and over the past four years the Company had no obligation to pay regulatory fees due to a very small customer base in the Washington market. Quality Telephone stated its belief that a \$1,050 fine on a zero dollar obligation is unjust.

3 On October 23, 2012, Commission Staff filed a response to Quality Telephone’s request. Staff acknowledged that Quality Telephone was not required to pay regulatory fees in the past four years, but stated that the Company was still required to file an annual report. Staff did not support mitigating the assessed penalty and recommended that Quality Telephone’s request be denied.

4 **Hearing.** Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission determined that a brief adjudicative proceeding (BAP) was appropriate for determining whether the penalty should be mitigated and what actions might be necessary to ensure that Quality Telephone complies with its regulatory obligations. On November 1, 2012, the Commission issued a Notice of Brief Adjudicative Proceeding and set November 27, 2012, at 10:00 a.m. as the time for the parties to make oral statements concerning their positions.

- 5 **Settlement.** On November 16, 2012, the parties notified the Commission that they had reached a full settlement in principle and asked the Commission to suspend the procedural schedule while they reduced their agreement to writing. The Commission granted the parties' request that same day and issued a Notice Suspending Procedural Schedule and Notice Cancelling Hearing. The Commission set November 30, 2012, as the deadline for the parties to file all required settlement documents or a status report on their efforts.
- 6 On November 29, 2012, the parties filed their Settlement Agreement and supporting narrative. As part of the Settlement Agreement, Quality Telephone admits that it violated WAC 480-120-382 by failing to timely file its 2011 annual report. The Company also agrees to pay a monetary penalty in the amount of \$350 and commits to cancel its registration on or before November 30, 2012.¹ If Quality Telephone fails to cancel its registration by that date, the terms of the Settlement Agreement require the Company to pay the original penalty amount of \$1,050.²
- 7 On November 29, 2012, Quality Telephone filed a request for cancellation of registration with the Commission, fulfilling one of its obligations under the Settlement Agreement.
- 8 **Evaluation of Settlement.** WAC 480-07-750(1) states in part: "The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission." Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:
- Whether any aspect of the proposal is contrary to law.
 - Whether any aspect of the proposal offends public policy.
 - Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

¹ Settlement Agreement, ¶¶ 9-12, and Narrative, ¶ 8.

² Settlement Agreement, ¶ 13; Narrative, ¶ 8.

9 The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

10 **Commission Decision.** With one exception, the Settlement Agreement reasonably resolves all issues in this proceeding and its terms are consistent with law and public policy. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. Quality Telephone admits to violating the Commission's rule on timely filing annual reports and commits to promptly cancel its registration in Washington, removing the possibility of future such violations. Staff achieves its goal of bringing the Company into compliance with its legal obligations without undue financial impact.

11 The Settlement Agreement included a remedy if Quality Telephone failed to comply with its commitment to promptly cancel its registration. As noted above, the Company has already met this requirement. However, the Settlement Agreement does not establish a due date for Quality Telephone to pay the \$350 mitigated penalty or provide a remedy if Quality Telephone fails to timely pay the required amount.

12 To ensure that the Company honors its remaining commitment and to reduce the possibility of future proceedings to enforce the Settlement Agreement, the Commission will approve the Settlement Agreement subject to the condition that \$700 of the original \$1,050 penalty assessment will be suspended subject to Quality Telephone fulfilling its remaining obligation in the Settlement to pay the \$350 mitigated penalty within 30 days of final approval of the Settlement Agreement. If Quality Telephone fails to timely make this payment, the entirety of the \$1,050 original penalty assessment will immediately be due and payable. Upon satisfaction of the Company's financial obligation, the Commission will waive the suspended portion of the original penalty assessment.

ORDER

THE COMMISSION ORDERS:

- 13 (1) The Settlement Agreement between Quality Telephone, Inc., and Commission Staff, attached to this Order and incorporated by reference, is approved as the resolution of all disputed issues in this docket, subject to the condition that \$700 of the original \$1,050 penalty assessment is suspended pending satisfaction of the requirement in the Settlement Agreement that Quality Telephone, Inc., makes payment of the \$350 mitigated penalty within 30 days of the date on which this Order becomes final. Failure to satisfy this requirement will result in the entirety of the original penalty assessment of \$1,050 being immediately due and payable. Upon satisfaction of this requirement, the Commission will waive the suspended portion of the original penalty assessment.
- 14 (2) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective December 7, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
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 **seven (7)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Settlement Agreement