

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

In the Matter of Penalty Assessment)	DOCKET UT-051509
Against)	
)	ORDER 02
MARATHON COMMUNICATIONS,)	
INC.)	COMMISSION DECISION
)	RESCINDING ORDER GRANTING
In the Amount of \$16,300.)	REQUEST FOR INSTALLMENT
)	PAYMENTS
.....)	

- 1 **Background:** On April 18, 2006, the Washington Utilities and Transportation Commission (Commission) assessed a penalty in the amount of \$16,300 against Marathon Communications, Inc. (Marathon) for violations of WAC 480-120-166. This regulation requires a telecommunications company to report: (1) the results of its investigation of service-affecting informal complaints to Commission Staff (Staff) within two business days from the date Staff passes the complaint to the company; and (2) the results of nonservice-affecting informal complaints to Staff within five business days from the date the Staff passes the complaint to the company. In addition, the regulation requires a telecommunications company to respond to requests from Staff for additional information on pending complaints within three business days.
- 2 On May 12, 2006, Marathon filed a letter with the Commission requesting approval to pay the penalty in twelve equal payments.
- 3 On May 31, 2006, Commission Staff responded to the request by supporting a payment plan for Marathon that would allow it to make regularly scheduled payments over a period of time not to exceed one year.
- 4 On June 26, 2006, the Commission entered Order 01 granting the request to discharge the penalty obligation in installment payments of at least \$1,358.33 commencing July 31, 2006, and continuing monthly thereafter for a period not to exceed one year.
- 5 **Motion for Order Rescinding Order 01:** On October 17, 2006, Staff filed a motion for order rescinding Order 01 because Marathon has not made any monthly payments to discharge its penalty obligation. Staff asserted that the balance of the penalty

remains at \$16,300. Staff stated that it attempted to contact Marathon in September 2006 to determine why the company had not complied with the Commission's order. Staff further stated that it received an e-mail message from Marathon on September 22, 2006, stating that Marathon was no longer providing service to its customers, had transferred all of its customers to another carrier, and that it was no longer in operation. In its message, Marathon further asserted that it was financially unable to pay the penalty or any other fees. Staff contended that Marathon is in violation of Order 01 and requested that Order 01 be rescinded and Marathon ordered to pay the penalty, in full, immediately. Marathon did not file a response.

- 6 **Commission Decision:** The Commission grants the motion and rescinds Order 01. According to WAC 480-07-380, a party may file a response to a dispositive motion within 20 days after the motion is served. A motion to rescind the relief granted by Order 01 in this proceeding is a dispositive motion. Staff served the motion on October 17, 2006. Marathon had until November 6, 2006, to file a response. Marathon failed to respond to the motion.
- 7 According to RCW 81.04.380, public service companies and their officers, agents, and employees **shall** comply with every order made by the Commission. Marathon was directed by Order 01 to remit installment payments in the amount of no less than \$1,358.33 commencing July 31, 2006, and continuing thereafter for a maximum of one year until the penalty assessment of \$16,300 was discharged in full. To date, Marathon has not made any payments and is in arrears \$5,433.32, or approximately one-third of the total penalty assessment.
- 8 Permitting Marathon to discharge its penalty assessment in installment payments was discretionary. Marathon has not made any installment payments toward fulfilling its penalty obligation or requested that its installment obligation be modified or extended. Accordingly, Order 01 is rescinded and the entire penalty assessment of \$16,300 is due and payable immediately.
- 9 According to RCW 81.04.380, any public service company that fails to comply with **any** order of the Commission shall be subject to a penalty not to exceed the sum of \$1,000, for each and every offense. While the Commission is not initiating additional penalty assessments at this juncture, Marathon should familiarize itself with this statute and understand that the Commission has the discretion to do so.

ORDER

10 The Commission grants the motion for order rescinding Order 01 filed by
Commission Staff and orders Marathon Communications, Inc. to pay the total penalty
assessment of \$16,300 immediately.

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DATED at Olympia, Washington, and effective November 7, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP JONES, Commissioner