

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UT-132153
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 02
)	
v.)	
)	
GRASSHOPPER GROUP, LLC,)	ORDER DENYING
)	GRASSHOPPER’S MOTION TO
Respondent.)	DISMISS
)	
.....)	

1 **NATURE OF PROCEEDING.** This proceeding arises out of a complaint filed by Commission Staff on April 16, 2014, against Grasshopper Group, LLC (Grasshopper or Company). The complaint alleges that Grasshopper filed an inaccurate 2012 Annual Report and paid incorrect regulatory fees, in violation of RCW 80.04.080 and WAC 480-120-382. The complaint alleges that Grasshopper did not correct its filing until August 9, 2013, a period of 101 days after the May 1, 2013, deadline for filing annual reports. The complaint seeks a penalty of up to \$30,300.

2 **MOTION.** On May 5, 2014, Grasshopper filed a motion to dismiss the complaint. In accordance with the procedural schedule adopted at the prehearing conference, Commission Staff filed its response to the motion on May 23, 2014.

3 **FACTS.** The Commission approved Grasshopper’s application to register in Washington as a competitive telecommunications company on December 12, 2009.¹

4 On April 29, 2013, Grasshopper filed its 2012 Annual Report and paid its 2013 regulatory fees based on reported Washington revenue of \$184,781.11. The Company’s 2011 annual report reported an identical amount of Washington revenue.²

¹ Grasshopper Motion, ¶ 1 and ¶ 7; Commission Staff Response, ¶ 9.

5 On or about August 2, 2013, the Commission questioned the identical revenue figures
Grasshopper submitted for its 2011 and 2012 annual reports. On August 8, 2013, the
Company filed a revised 2012 annual report and paid additional regulatory fees based
on the revised higher revenue amount.³

6 **COMPANY POSITION.** Grasshopper makes two main arguments for dismissing
the Commission’s complaint. The Company’s remaining arguments address potential
mitigating factors and are not properly resolved in a dispositive motion.⁴

7 First, the Company argues that the Commission lacks jurisdiction over Grasshopper’s
services because the Company does not engage in the provision of intrastate
telecommunications services.⁵ The Company asserts that “not a single one of the
virtual numbers that Grasshopper provides its customers is associated with telephone
lines in the State of Washington nor do any reside in rate centers located in
Washington.”⁶ Grasshopper states that every use of its services requires
communication with the Company’s equipment located in Massachusetts,⁷ making
Grasshopper an interstate entity subject to federal regulation, not state regulation.
Nevertheless, Grasshopper concedes that it “voluntarily subjected itself to registration
and compliance reporting in the State of Washington.”⁸

8 Second, Grasshopper argues that WAC 480-120-382’s requirement for competitively
classified telecommunications companies to file annual reports by May 1 of each year
does not specify that these reports must be accurate.⁹ The Company argues that the

² Grasshopper Motion, ¶ 9.

³ *Id.*, ¶ 11.

⁴ The Company acknowledges that its 2012 annual report contained a mistake and then argues that the Commission unfairly singled out Grasshopper for punitive treatment (*Id.*, ¶¶ 33-48). The Company should present these arguments at hearing on June 17, 2014.

⁵ Grasshopper Motion, ¶¶ 24-29.

⁶ *Id.*, ¶ 3.

⁷ *Id.*, ¶ 26.

⁸ *Id.*, ¶ 28.

⁹ *Id.*, ¶¶ 30-32.

rule fails to indicate that the Commission will consider any report containing an error late-filed and subject to penalties and interest.

9 **STAFF POSITION.** Commission Staff contends that Grasshopper is subject to the reporting obligations of WAC 480-120-382 because the Company voluntarily submitted itself to the Commission’s regulatory jurisdiction. Staff argues that once a telecommunications company registers with the Commission, it must make all required filings, not just those it chooses to submit.¹⁰

10 Commission Staff next contends that the Commission’s annual report requirement necessarily calls for accurate information. Staff points out that the annual report form includes a certification by a company representative that the information included in the report is a true and correct reflection of the company’s business. According to Staff, allowing incorrect information in an annual report would be absurd, make the certification meaningless, and prevent the Commission from functioning in the public interest.¹¹

11 **DISCUSSION AND DECISION.** RCW 80.04.080 requires all public service companies to “annually furnish to the commission a report in such form as the commission may require” and to “specifically answer all questions propounded to it by the commission.” The statute specifies that “such reports shall be made out under oath and filed with the commission at its office in Olympia on such date as the commission specifies by rule.” WAC 480-120-382 requires competitively classified telecommunications companies to file annual reports by May 1 of each year, including an income statement and balance sheet for total company operations and a description of revenues for Washington and Washington intrastate operations.

12 Grasshopper registered with the Commission in December 2009. The Company has been filing annual reports with the Commission since that time. Grasshopper now argues that its services are interstate in nature and that the Commission cannot properly regulate the company. We disagree.

¹⁰ Staff Response, ¶¶ 8-10.

¹¹ *Id.*, ¶¶ 14-18 and Appendix B (annual report certification form).

- 13 Grasshopper willingly registered as a competitively classified telecommunications company in Washington. As noted above, the Company’s motion acknowledges that doing so “voluntarily subjected itself to registration and compliance reporting in the State of Washington.” No matter the overall nature of its business, this Company has registered to conduct business in Washington, has reported intrastate revenue in Washington, and continues to do so. Grasshopper, like every other competitively classified telecommunications company in this state, must comply with RCW 80.04.080 and WAC 480-120-382. The Commission has jurisdiction to enforce the annual report filing requirement against Grasshopper.
- 14 The Company’s second argument is equally unpersuasive. There is no dispute that Grasshopper filed its 2012 annual report prior to the May 1 deadline. However, Grasshopper did not ensure that the information contained in that report was accurate, nor did the Company indicate that its reported Washington revenue was only an estimate or calculated from the best available information. Grasshopper concedes that the \$184,781.11 revenue figure was incorrect but now wishes to debate the requirement for filing accurate revenue figures with the Commission.
- 15 Grasshopper argues that a person of common intelligence would not understand that an annual report filed with the Commission is expected to be accurate, creating a question of due process before any penalty can be imposed.¹² The statute itself, however, is more than clear: annual reports must be “made out under oath” and contain the requested information. Any reasonable person filing a report “under oath,” particularly one completing a formal attestation that the report “is a correct statement of the business and affairs” of the company must recognize that the Commission is seeking true and correct information. If the annual report filing requirement is to have any meaning to people of common intelligence, Grasshopper’s arguments to the contrary must fail.
- 16 In sum, Grasshopper voluntarily registered with the Commission as a competitively classified telecommunications company. By doing so, the Company agreed to file timely annual reports with accurate information about intrastate revenues. The Commission’s statute and implementing regulation are clear about the due date and

¹² Grasshopper Motion, ¶¶ 31-32, citing *Gibson v. City of Auburn*, 748 P.2d 673, 678 (1988).

the required contents of such reports, emphasizing the need for accuracy by including a certification form to be signed by a responsible corporate officer. Grasshopper's motion to dismiss the Commission's complaint should be denied.

ORDER

17 **THE COMMISSION ORDERS** that Grasshopper's motion to dismiss is denied.

DATED at Olympia, Washington, and effective May 30, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.