

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

WASHINGTON UTILITIES AND)	DOCKET UT-080455
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 02
)	
v.)	
)	
WTI, LLC,)	INITIAL ORDER GRANTING
)	MOTION FOR DEFAULT
Respondent.)	JUDGMENT; IMPOSING
)	PENALTIES
.....)	

1 ***Synopsis:** This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. This Order grants the Commission regulatory staff’s¹ Motion for Default Judgment and grants the relief requested in this complaint proceeding on the basis of findings made on uncontested evidence furnished by Staff with its Motion. The Commission imposes monetary penalties totaling \$73,000 for violations of Commission rules as set forth in the Complaint and demonstrated by the evidence.*

SUMMARY

2 **PROCEEDINGS:** This is a complaint proceeding initiated by the Washington Utilities and Transportation Commission (Commission) against WTI, LLC (WTI), on findings of probable cause that WTI committed various violations of statute and rules with which it is required to comply in providing telecommunications services in Washington. The specific matters of which the Commission complains are set forth fully in the Complaint, issued in this docket on March 4, 2009. WTI did not file an answer.

¹ In formal proceedings, such as this, the Commission’s regulatory staff (Commission Staff or Staff) functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners’ policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455.*

- 3 **APPEARANCES:** Michael Fassio, Assistant Attorney General, Olympia, Washington, appeared for the Commission Staff at a duly noticed prehearing conference on April 8, 2009. No one appeared for WTI.
- 4 **MOTION FOR DEFAULT JUDGMENT:** On April 29, 2009, Staff filed its Motion for Default Judgment supported by the sworn Declarations of Sheri Hoyt and Lisa Wyse. Ms. Hoyt, as part of her Declaration, furnished a copy of Staff's Investigation of WTI.
- 5 **DETERMINATION:** The Commission grants Staff's Motion for Default Judgment and finds on the basis of uncontested evidence that WTI committed 73 violations of Commission rules as specified in the Complaint in this docket. The Commission determines that WTI should be penalized in the amount of \$1,000 for each violation, for a total penalty of \$73,000. WTI is required to pay this penalty within ten days following the date on which this Initial Order becomes final and is no longer subject to Commission or judicial review.

MEMORANDUM

I. Background

- 6 In December 2008, Staff completed an investigation into WTI and prepared an Investigation Report documenting its findings. Staff determined that WTI committed 73 violations of Commission rules. Staff found that on 20 occasions WTI ceased providing dial-tone service to customers in Washington without providing proper written notice to customers, or to the Commission, in violation of several provisions of WAC 480-120-083. In addition, WTI failed to respond to eight Commission-referred service complaints within two business days as required by WAC 480-120-166(6), for a total of 53 violations of that rule.
- 7 On January 30, 2009, the Commission sent a Complaint and Notice of Prehearing Conference in this Docket to WTI, by regular (first class, postage-prepaid) and certified mail, to 22722 29th Drive, Ste. 120, Bothell, WA 98021-4448, the company's address on file with the Commission. The copy mailed by certified mail was returned to the Commission as "unclaimed." The returned envelope provided a forwarding address for WTI, LLC at P.O. Box 1132, Port Hadlock, WA 98339-1132. The copy mailed by regular mail to the company's Bothell address has not been returned to the Commission.

8 On March 4, 2009, the Commission re-served the Complaint and Notice of Prehearing Conference by sending it to WTI by regular (first class, postage prepaid) and certified mail, to P.O. Box 1132, Port Hadlock, WA 98339-1132. The copy mailed by certified mail was returned to the Commission as “unclaimed.” The copy mailed by regular mail has not been returned to the Commission.

9 WTI did not answer the Complaint as allowed under WAC 480-07-370(1)(c)(iii).

10 The Commission convened a duly noticed prehearing conference in this proceeding at Olympia, Washington on April 8, 2009, before Administrative Law Judge Dennis J. Moss. Michael Fassio, Assistant Attorney General, Olympia, Washington, appeared at the prehearing conference for Commission Staff. No one appeared for WTI.²

II. Motion for Default Judgment

11 On April 29, 2009, Staff filed and served on WTI, at its last known address, Staff’s Motion for Default Judgment and the sworn declarations of Staff members Sheri Hoyt, who conducted the Staff’s investigation and prepared the Staff’s Investigation Report; and Lisa Wyse, the Manager of the Commission’s Records Center, which is responsible, among other things, for service of complaints, and receipt and maintenance of all documents filed in adjudicative proceedings such as this one. Staff requests by its Motion that the Commission enter an order finding WTI in default for its failure to appear and disposing of the issues in this proceeding on the merits as authorized under WAC 480-07-450(1).

12 WTI did not respond to Staff’s Motion.

III. Discussion and Determination

13 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.³ 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,

² The Commission’s telephone “bridge line” was activated in the hearing room giving WTI the ability to participate via telephone in addition to its opportunity to appear in person. No one responded when the presiding officer asked whether anyone was on the bridge line.

³ WAC 480-07-150(7).

2009.⁴ The certified mail copy was returned “unclaimed.” However, the first class mail has not been returned.⁵ 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 file with the Commission.⁶ The Complaint made clear that any party who failed to attend or participate in the prehearing may be held in default.⁷

14 WTI has neither responded in writing or by other means, nor appeared in person, at any stage of this proceeding. It may, therefore, be found in default.⁸ When a party is found in default, the Commission’s order stating that finding may also dispose of the issues in the proceeding.⁹

15 In light of WTI’s failure to appear at the prehearing conference, and its continuing failure to respond to the Commission in any way concerning the Complaint against it, the Commission finds good and sufficient reason to grant Staff’s Motion for Default Judgment. In addition, the Commission finds on the basis of the uncontested evidence that WTI committed 73 violations of Commission rules, as follows:

- Fifty-three violations of WAC 480-120-166(6) by failing to timely respond to service-affecting Commission complaints within two business days.¹⁰
- 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.¹¹
- 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.¹²

⁴ See Declaration of Lisa Wyse at ¶ 3.

⁵ *Id.*

⁶ *Id.*

⁷ Complaint at ¶ 46.

⁸ RCW 34.05.440; WAC 480-07-450.

⁹ *Id.*

¹⁰ See Declaration of Sheri Hoyt at ¶ 5.

¹¹ *Id.* at ¶ 6.

¹² *Id.* at ¶ 7.

- 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.¹³
- 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.¹⁴
- 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.¹⁵

16 RCW 80.04.380 provides:

Any 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 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.

Thus, under RCW 80.04.380, the 73 violations by WTI detailed above carry a maximum penalty of \$73,000, which is the penalty Staff recommends. Considering the un rebutted evidence¹⁶ and the absence of any evidence establishing a basis for even partial mitigation, the Commission determines it should accept Staff's recommendation and impose penalties totaling \$73,000 for WTI's violations of Commission rules.

FINDINGS OF FACT

17 Having discussed above all matters material to our decision, and having stated general findings, the Commission now makes the following summary findings of fact. Those

¹³ *Id.* at ¶ 8.

¹⁴ *Id.* at ¶ 9.

¹⁵ *Id.* at ¶ 10.

¹⁶ *See* Declaration of Hoyt at ¶ 11; Exhibit 1 at 12; Complaint at ¶ 42.

portions of the preceding discussion that include findings pertaining to the Commission's ultimate decisions are incorporated by this reference.

- 18 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices and accounts of public service companies, including telecommunications companies.
- 19 (2) WTI is a "public service company" and "telecommunications company" as those terms are defined in RCW 80.04.010 and as those terms otherwise are used in Title 80 RCW. WTI is engaged in Washington state in the business of supplying utility services and commodities to the public for compensation.
- 20 (3) On January 30, 2009, and March 4, 2009, the Commission served on WTI a Complaint and Notice of Prehearing Conference in this Docket. WTI did not answer the Complaint or appear at the prehearing conference.
- 21 (4) On April 29, 2009, Staff filed and served its Motion for Default Judgment on WTI. WTI did not respond to Staff's Motion.
- 22 (5) The uncontested evidence shows that WTI has committed 73 violations of Commission rules, as set forth in detail in the body of this Order.

CONCLUSIONS OF LAW

23 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 24 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 25 (2) The Commission provided to WTI proper service and notice of its Complaint issued on January 30, 2009, the prehearing conference conducted on April 8, 2009, and Staff's Motion for Default Judgment filed on April 29, 2009.

- 26 (3) WTI's failures to answer the Complaint issued on January 30, 2009, to attend or otherwise participate in the prehearing conference on April 8, 2009, and to respond to Staff's Motion for Default Judgment filed on April 29, 2009, establish good and sufficient cause to grant Staff's Motion for Default Judgment.
- 27 (4) WTI has committed 73 violations of the Commission's rules and in the absence of evidence justifying mitigation of any part of the maximum statutory penalties for such violations should be ordered to pay penalties in the amount of \$73,000.

ORDER

THE COMMISSION ORDERS That:

- 28 (1) Commission Staff's Motion for Default Judgment is granted.
- 29 (2) WTI, LLC, must remit to the Commission within ten days after the date upon which this Order becomes final and no longer subject to review penalties in the total amount of \$73,000 determined on the basis of \$1,000 for each of 73 violations of Commission rules as specified in the body of this Order.
- 30 (3) The Commission Secretary is given discretion to ensure compliance with the requirements of this Order, including discretion to implement a payment plan upon request made by WTI, LLC, prior to the date upon which the assessed penalties become due.
- 31 (4) The Commission retains jurisdiction to enforce this Order.

Dated at Olympia, Washington, and effective May 8, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

NOTICE TO THE 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 (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 an 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. You will be notified if this order becomes final.

In addition, WAC 480-07-450(2) provides that a party who is dismissed from a proceeding or found in default may contest the order of dismissal or default by filing a written motion with the Commission within ten days after service of the final order. A dismissed party or party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process.

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 (8) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 S Evergreen Park Drive, SW
Olympia, WA 98504-7250