

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: UT-130787
PENALTY AMOUNT: \$150

Airnex Communications, Inc.
5000 Hopyard Rd., Suite 240
Pleasanton, CA 94588

According to the Washington Utilities and Transportation Commission's records, you have violated Washington Administrative Code (WAC) 480-120-382, which requires telecommunications companies to file annual reports and pay regulatory fees each year by May 1. You did not file an annual report or pay regulatory fees by May 1, 2013.

Revised Code of Washington (RCW) 80.04.405 authorizes the Commission to assess penalties of \$100 for violations of Commission rules. Each violation is a separate and distinct offense and, in the case of a continuing violation, every day's continuance is a separate and distinct violation. The Commission interprets noncompliance with WAC 480-120-382 beyond May 1 as a continuing violation, and assesses penalties of \$100 for each day a company fails to file its report or pay its regulatory fees after that date.

As a result, the Commission hereby notifies you that it has assessed penalties against you in the amount of \$150 on the following basis:

On March 1, 2013, the Commission mailed 2012 annual report forms and 2013 regulatory fee packets to all telecommunications companies registered in Washington state. A letter from the Commission's Acting Executive Director Steven V. King instructed these companies to file annual reports and pay regulatory fees by May 1, 2013. The letter stated that failure to file the annual report by May 1 would result in penalties, and possible cancellation of the company's authority to operate in Washington. The deadline for requesting an extension to file your annual report was April 24. You did not request an extension.

On May 10, the Commission issued a notice to companies that had not yet filed their annual report or paid regulatory fees, informing these companies that they were subject to enforcement action, including penalties that began accruing on May 2. Companies that filed their annual reports and paid regulatory fees after May 1, but on or before May 24, 2013, are subject to penalties that the Commission uses its discretion to mitigate to \$25 per day if the company had not filed late in prior years. Companies that were late in prior years are subject to an

additional \$25 per day for each year they were late, up to a total of \$100 per day. For first-time late filers who filed their report after May 24, the Commission will mitigate the penalties to 50 percent of the maximum amount. No further mitigation will be granted unless the company provides new information that is unrelated to these factors. Mitigation will not be granted on the basis that a company was unaware that a report must be filed.

On May 6, 2013, Airnex Communications, Inc. filed its 2012 annual report and paid its 2013 regulatory fee. That date is three business days from May 1, when penalties began to accrue, resulting in a potential penalty assessment of \$300. Your filings were also delinquent in 2012, which increases your penalty by \$25 per day for each past delinquency. The Commission, therefore, exercises its discretion to mitigate the penalty to \$50 per day, resulting in a total penalty of \$150.

Your penalty is due and payable now. If you believe the violation did not occur, you may request a hearing to contest the penalty assessment. If there is a reason for the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty. See RCW 80.04.405.

You have the right to present your request for review or mitigation at a hearing, but you are not required to do so. If you do, the Commission will review the evidence supporting your request in an informal hearing, called a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider your plea and notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Request a hearing to contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission will then sue you to collect the penalty.

DATED at Olympia, Washington, and effective July 31, 2013.

GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT UT-130787

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

[] 1. Payment of penalty. I admit that the violations occurred. I have:

[] Enclosed \$150 in payment of the penalty

[] Submitted my payment of \$150 online at www.utc.wa.gov. My confirmation number is _____.

[] 2. Request for a hearing. I believe that one or more of the alleged violations did not occur, based on the following information, and request a hearing, which is a process that allows an affected person to present argument to an administrative law judge for a decision by an administrative law judge:

[] 3. Application for mitigation. I admit the violations, but I believe that the penalty should be reduced for the reason(s) set out below.

[] a) I ask for a hearing for a decision by an administrative law judge based on the information presented above.

OR [] b) I waive a hearing and ask for an administrative decision on the information I presented directly above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”