TO: Sally Johnston, Senior Assistant Attorney General

FROM: Vicki Elliott, Assistant Director, Transportation Safety
Sheri Hoyt, Compliance Specialist

DATE: December 27, 2006

SUBJECT: Penalty Assessment in Docket UT-051509
Marathon Communications, Inc.

In January 2006, Business Practices Investigations staff completed an investigation into the business practices of Marathon Communications, Inc. Specifically, staff looked at Marathon's compliance in the year 2005 with WAC (WAC) 480-120-166, which requires telecommunications companies to report:

1. The results of its investigation of service-affecting complaints within two business days.
2. The results of non-service-affecting complaints within five business days.
3. The results of requests for additional information on pending complaints within three business days.

We provided Marathon a copy of the report in late January 2006. In February, we met with Marathon to discuss the investigation findings and the possible staff recommendation to the commission for penalties of up to $65,400 for violations of WAC 480-120-166. Through a series of subsequent letters and conference calls, Marathon and staff agreed on penalties totaling $16,300 for the 654 violations. On April 18, 2006, the commission issued a penalty assessment against Marathon in that amount.

On May 12, 2006, the commission received Marathon's written agreement to pay the penalty and request for an installment plan of 12 equal payments of $1,358.33 per month beginning in June 2006. Staff supported the payment plan. On June 26, 2006, the commission issued an order granting Marathon a payment plan with the first payment of $1,358.33 due by July 31, 2006.

On September 22, 2006, staff received an e-mail communication from Marcos Melendez, President of Marathon Communications, Inc., which stated Marathon was no longer providing service to its customers, had closed its bank account and transferred its customers to another carrier. Mr. Melendez requested the withdrawal of Marathon's tariffs and certification. Mr. Melendez stated that due to the company's financial position and the fact that it was no longer operating, Marathon was unable to pay the fines or any other fees.

In response, staff requested the commission rescind the order authorizing the installment plan. The commission rescinded the order authorizing the payment plan on November 8, 2006. On that same day, Marathon's request to cease doing business in Washington appeared on the commission's No Action Agenda at its regularly scheduled open meeting. The commission allowed Marathon's request to cease business to become effective.

At this time we are requesting permission to write-off the $16,300 penalty as it appears unlikely the commission could collect the monies from a company that is not registered and no longer operates in Washington.