

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: UT-170437

PENALTY AMOUNT: \$1000

Cbeyond Communications, LLC
1301 Chestnut Street
Emporia, KS 66801

According to Washington Utilities and Transportation Commission (Commission) records, you have violated Washington Administrative Code (WAC) 480-120-382, which requires telecommunications companies to file their annual report and pay regulatory fees each year by May 1. You did not file a complete annual report by May 1, 2017.

Revised Code of Washington (RCW) 80.04.405 authorizes the Commission to assess a penalty of \$100 for each violation of a Commission rule. 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 complete report or pay its regulatory fees after that date.

As a result, the Commission has assessed penalties against you in the amount of \$1000 on the following basis:

On February 28, 2017, the Commission sent the 2016 annual report forms and the 2017 regulatory fee packets to all telecommunications companies registered in Washington. The instructions page for the annual report form instructed these companies to file complete annual reports and pay regulatory fees by May 1, 2017. The instructions page also stated that failure to file the complete annual report by May 1 would result in penalties. The deadline for requesting an extension to file your annual report was April 15. You did not request an extension.

As of May 15, 2017, Cbeyond Communications, LLC had not filed its complete 2016 annual report or paid its 2017 regulatory fee. May 15 is 10 business days from May 1, resulting in a total penalty of \$1,000. A complete and accurate annual report is still not on file and additional penalties may accrue until the Commission receives the report and any required regulatory fee.

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. The Commission will grant that request only if material issues of law or fact require consideration of evidence and resolution in a hearing. A request for a hearing must include a written statement of the

reasons supporting that request. Failure to provide such a statement will result in denial of the request.

If there is a reason for the violation that you think should excuse or reduce the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. The Commission will grant a request for a hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW 80.04.405.

The Commission will only grant requests for mitigation if the violations occurred due to circumstances beyond your control. Such circumstances include, but are not limited to: death or serious illness of the person responsible for filing the report, or a member of that person's immediate family; destruction by fire or other casualty of your place of business or business records; or an act of fraud, embezzlement, theft, or conversion on the part of your employee.

The following are examples of circumstances that are **not** considered to be beyond your control, and thus are not acceptable bases for requesting mitigation: financial hardship; a misunderstanding or lack of knowledge of Commission rules; failure to receive an annual report form from the Commission; mistakes or misconduct on the part of your employees; employee termination or turnover; personal events such as weddings or graduation ceremonies; and vacations or business trips.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider the evidence and will 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 \$1000 due.
- Request a hearing to contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

In addition to your selection, a complete annual report and payment of the regulatory fee is required. Payment of the penalty does not satisfy the requirement that you file an annual report and pay any applicable regulatory fee.

Please indicate your selection on the enclosed form and file it with the Washington Utilities and Transportation Commission at: <https://www.utc.wa.gov/docs/Pages/ElectronicFiling.aspx>, **within FIFTEEN (15) days** of receiving this electronic notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection, which may file suit in state court to collect the penalty. The Commission may also initiate proceedings under WAC 480-121-060 to revoke your authority to provide telecommunications services in Washington.

DATED at Olympia, Washington, and effective June 26, 2017.

/s/ Gregory J. Kopta

GREGORY J. KOPTA

Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT UT-170437

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 \$_____ in payment of the penalty

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

2. **Contest the violation.** I believe that one or more of the alleged violations did not occur, for the reasons I describe below (if you do not include reasons supporting your contest of the violations here, your request will be denied):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR

b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced because the violations occurred due to circumstances beyond my control, as explained below (if you do not include reasons that support your application for mitigation here, your request will be denied):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR

b) I ask for a Commission decision based solely on the information I provide 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.”