

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

PENALTY ASSESSMENT AGAINST TEL  
WEST COMMUNICATIONS, LLC, in the  
amount of \$143,100.00

DOCKET NO. UT-040572

STAFF'S MOTION TO  
CORRECT ORDER

1           The Washington Utilities and Transportation Commission (Commission) entered its  
Order on Brief Adjudication Granting, in Part, Mitigation of Penalties (Order) on December  
15, 2004, in the above-captioned docket. Staff of the Washington Utilities and Transportation  
Commission (Staff) brings this Motion to Correct Order pursuant to WAC 480-07-875(2),  
which provides that the Commission may correct obvious or ministerial errors in orders on its  
own initiative or on the motion of any party.

2           Staff's review of the Commission's Order revealed the following errors:

3           Paragraph 5 states the penalty associated with Tel West Communications, LLC's (Tel  
West) failure to respond to Commission inquires is \$42,700. However, the penalty assessed  
for violations of WAC 480-120-166 totaled \$39,700.<sup>1</sup> In addition, ¶ 5 states the Commission  
declines to mitigate the penalty for violations of WAC 480-120-166. However, the  
Commission allows for mitigation of \$500 in ¶ 16. Paragraph 5 also states the mitigated  
penalty amount is \$91,400. This amount should be \$90,900 after the corrections described in

---

<sup>1</sup> *Penalty Assessment Against Tel West Communications, LLC*, Docket No. UT-040572, Penalty Assessment

this motion are applied.

4 Paragraph 13 states the “penalty assessment reflects 427 days in excess of times set out in WAC 480-120-166.” The penalty assessment states that the number of days involved was 397, which is the equivalent of 13 months.<sup>2</sup>

5 Paragraph 39 states, “We think that it is appropriate, considering all of the factors, to mitigate the PIC freeze penalty by 50%, from \$103,700 to \$51,850.” The penalty for PIC freeze violations was \$103,400, and 50% of that total would be \$51,700.<sup>3</sup>

6 Paragraph 39 also states the 50% mitigation was based on the inaccurate calculation of certain penalties and the factors discussed by the Commission in the Order. Staff notes that the inaccurate calculation of certain penalties, which results in the \$500 mitigation noted in ¶ 16, applies to the penalty assessed for failing to respond as required by WAC 480-120-166.<sup>4</sup> Staff believes the 50% mitigation of the PIC freeze penalty could, and should, be based solely on the factors as discussed by the Commission in the Order.

7 Paragraph 44 states, “the penalties represent 427 days of delay.” The number of days involved was 397, as reflected in the penalty assessment.

8 Paragraph 45 states, “We believe that the conduct is so clear, so serious, and so consistent over such a long period, that the full penalty should apply.” Staff believes this sentence should be corrected to reflect the \$500 mitigation resulting from inaccurate calculation of the penalty.

9 Paragraph 46 states, “The penalties of \$42,700 for violating the delayed response rule, WAC 480-120-166, are not mitigated. The total penalty is thus mitigated to \$94,400.” The

---

Order at 2 (June 23, 2004) (Penalty Assessment).

<sup>2</sup> *Id.*; see also, Declaration of Betty Young, Exhibit A at 15.

penalty assessed was \$39,700, as reflected in the penalty assessment. The penalty is to be mitigated by \$500, as reflected in ¶ 16 of the Commission's Order. The mitigated amount would be \$39,200. Thus, the total mitigated penalty is \$90,900.

10 Paragraph 51, which is Finding of Fact No. 5, states the number of days associated with violations of WAC 480-120-166 was 427. The number of days involved was 397. The Commission assessed a penalty of \$39,700, rather than a penalty of \$42,700.<sup>5</sup>

11 Paragraph 54, which is Finding of Fact No. 8, states that the penalties for failure to respond should not be mitigated; however, the Commission determined that the penalties should be mitigated by \$500 in ¶ 16.

12 Paragraph 56, which is Conclusion of Law No. 2, contains a typographical error regarding the amount of the penalty. The penalty amount in the order has one zero too many: it should read \$51,700.

13 Paragraph 58, which is Conclusion of Law No. 4, states the total mitigated penalty is \$94,400. However, with the corrections, the total mitigated penalty is \$90,900.

14 Paragraph 59 states the penalties assessed totaled \$143,000, but the penalties were \$143,100. The mitigated amount should be \$90,900, rather than \$94,400.

15 Staff respectfully requests the Commission's Order on Brief Adjudication Granting, in Part, Mitigation of Penalties be corrected as described above.

DATED this 17<sup>th</sup> day of December 2004.

CHRISTINE O. GREGOIRE  
Attorney General

---

<sup>3</sup> Penalty Assessment at 2.

<sup>4</sup> Staff Response to Application for Mitigation of Penalties at ¶ 7.

<sup>5</sup> Penalty Assessment at 2.

---

LISA WATSON  
Assistant Attorney General  
Counsel for Washington Utilities and  
Transportation Commission Staff  
(360) 664-1186