

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of PENALTY
ASSESSMENT AGAINST EXCEL
TELECOMMUNICATIONS, INC., in the
amount of \$2,600.00

DOCKET NO. UT-050713

DECLARATION OF
BETTY YOUNG

BETTY YOUNG, under penalty of perjury under the laws of the state of Washington, declares as follows:

1. I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
2. I am employed by the Washington Utilities and Transportation Commission (Commission) as a Compliance Specialist in the Business Practices Investigations Section. I have been employed at the Commission for approximately 6 years, holding various positions. As a Compliance Specialist, my responsibilities include conducting investigations regarding the business practices of regulated utility or transportation companies. As part of those duties, I investigate registered telecommunications companies that may be operating in violation of Commission statute, rule, order, tariff, or price list.
3. On July 20, 2005, Excel Telecommunications, Inc. (Excel), filed with the Commission an Application for Mitigation of Penalties (Mitigation Request) in Docket No. UT-050713. I have read the Mitigation Request, including all attached exhibits.
4. This Mitigation Request arises from a Notice of Penalties Incurred and Due for Violations of Laws, Rules and Regulations issued by the Commission on June 29, 2005, in Docket No. UT-050713. In that Notice, the Commission issued penalties of \$2,600 for 26 violations of WAC 480-120-166 for failure to respond timely to Commission-referred complaints.
5. Before recommending the Commission issue penalties, as part of my job, I conducted an investigation into Excel's practices pertaining to responding to Commission-referred complaints. My investigation resulted in a Staff report

titled "Excel Telecommunications, Inc., Staff Investigation" in Docket No. UT-050713. A true and accurate copy of that report is attached to this declaration as Attachment A.

6. A copy of Staff's Investigation Report in Docket UT-050713 was sent to Excel through its Director of Regulatory Affairs, Becky Gipson, by mail with the penalty assessment on June 29, 2005.
7. The violations in this case arose from informal complaints filed by customers with the Commission and addressed by the Commission's Consumer Affairs Staff.

Specific Complaints Addressed by Excel in its Mitigation Request

Complaint No. 87463

8. Excel requests the number of violations associated with Complaint No. 87463 be reduced by one. Excel states that its records reflect that the company responded to Staff on February 6, 2004; one day past the required response date. However, Excel maintains its management tracking records reflect that the response was actually sent on February 5, 2004, but the transmission of the response did not occur until the following morning. While the company states that a transmission error caused the response to be late, the Commission has no proof that this occurred, nor did Excel provide proof in its Mitigation Request. A true and accurate copy of Complaint No. 87463 is attached to this declaration as Attachment B. The response in the complaint was received on the day after the required due date. Attachment B at 1. When the complaint was initially passed to the company, Staff's instructions stated, in part: "Response due...on or before 2/5/04." Staff noted a violation for late response and Excel did not dispute the violation in the complaint. Attachment B at 5.

Complaint No. 90484

9. Excel requests that the violations associated with Complaint No. 90484 be eliminated entirely or reduced by six because of lack of clarity around opened, closed, and reopened dates in the complaint. Excel maintains that the company's recorded dates conflict with dates recorded by Staff in the complaint and that these inconsistencies lend to confusion about Staff's expectations of response requirements. Excel also notes the, "...vague nature of WAC 480-120-166 with respect to deadlines for responses to informal, non-core issue follow-up inquiries."

10. A true and accurate copy of Complaint No. 90484 is attached to this declaration as Attachment C. According to the complaint record, Excel did not indicate confusion about the requirements of the rule, nor did the company question opened, closed, or re-opened dates during the complaint. *See generally*, Attachment C. The requirements in the rule do not seem vague regarding responses to requests for additional information. WAC 480-120-166(8), which Staff cited numerous times within the complaint, states that unless another time is specified in the rule or by Staff, the company must respond to requests for additional information within three business days. Attachment C at 7, 9-10, 18, and 23-24.
 11. On the issue of closed dates, WAC 480-120-166(10) states that a complaint may not be considered closed until Commission staff informs the company that the complaint is closed. Excel notes in the Mitigation Request that its records indicate the complaint was initially closed on August 19, 2004. Staff neither closed the complaint nor took any other documented action on that date. Attachment C at 1-6. Excel may not consider a complaint closed until Commission staff informs the company that the complaint is closed.
 12. Excel has had a significant amount of technical assistance on the requirements of WAC 480-120-166 and its responsibilities for responding timely to Staff. However, upon further review, information in the complaint supports that there are sufficient disagreements between information submitted by the company in its Mitigation Request and the information contained in the complaint record regarding the two violations alleged for late response on September 8, 2004, and the six violations alleged on November 30, 2004, to warrant mitigation a total of eight violations. Regarding the two violations alleged on November 9, 2004, Excel did not provide significant information to disprove the violations. The complaint record demonstrates that the company did not respond timely and the two violations alleged on November 9, 2004, are appropriate.
- Complaint No. 91531
13. Excel requests that the violations associated with Complaint No. 91531 be dismissed or waived based on the “vague nature of WAC 480-120-166.” Excel contends that open and closed dates of this complaint were questionable and not communicated clearly. A true and accurate copy of Complaint No. 91531 is attached to this declaration as Attachment D.

14. The requirements of WAC 480-120-166 do not appear to be vague. Regarding the open and closed dates, Excel's records and the Commission's records both indicate that the complaint was initially opened on October 29, 2004. Mitigation Request at 3; Attachment D at 1. The complaint was not re-opened on November 17, 2004, as Excel alleges in its Mitigation Request, as the complaint had not been closed at that point. Staff did not close the complaint until December 16, 2004, and notification of the closure was provided to Excel on that date. Attachment D at 4. Instead, the complaint record reflects that Staff requested additional information from Excel on November 17, and Excel did not respond until December 13, 2004. Attachment A at 8 (Note that column three in the chart reflects "Date Opened or Date Information Requested"); Attachment D at 3-4. Staff notified Excel that the violations of WAC 480-120-166(8) were alleged for failure to respond to Staff's request for information and included the text of this portion of the rule in the notification. Attachment D at 3. Excel neither disputed the violations nor indicated confusion about open and closed dates during complaint. Attachment D at 3-4.

Normal Practices

15. Excel states that it works with regulatory agencies throughout the United States and categorizes the Commission's response time requirements as "unique." While the requirements for company responses to complaints filed in Washington State may be different from other states, the Commission has communicated with Excel regarding the specific requirements of WAC 480-120-166 since 2003 on numerous occasions within complaints and through a more formal staff investigation.

Company Changes & Audit

16. Excel states that the company has recently made changes including assigning Commission-referred complaints to senior staff and adjusting its processes around how each complaint and requests for information are handled. These are positive steps and will no doubt facilitate timely communication with the Commission in consumer complaints going forward. Excel also states that company responses to the Commission on consumer complaints filed in 2005 have been timely. The Commission's complaint data for 2005 supports this statement.

17. However, the Commission first contacted Excel about delayed responses and the requirements of WAC 480-120-166 in July 2003.¹ At that time, the Commission informed Excel that the company's response time would not only be monitored going forward, but late responses would be cited as violations of the rule. Excel was also informed that the Commission could impose penalties for such violations. Subsequently, the response time delays and violations continued until December 2004. While Staff is encouraged by the steps the company has taken in 2005, the penalties assessed are appropriate because the company took seventeen months to correct its practices and ensure timely responses to Commission-referred complaints. The penalties should be mitigated by no more than \$800.

DATED this 10th day of August 2005 at Olympia, Washington.



BETTY YOUNG

¹ See Staff Investigation Report at page 6 and Appendix D