

# WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT NO: UT-040572

PENALTY AMOUNT: \$143,100

### TELECOMMUNICATIONS COMPANY:

Tel West Communications, LLC  
3701 South Norfolk Street, Suite 300  
Seattle, WA 98118

The Commission believes that you have committed one or more violations of Washington Utilities and Transportation rules; specifically Washington Administrative Code (WAC) 480-120-147(5), which requires companies to obtain customer authorization prior to adding a preferred carrier freeze to the customer's account, and WAC 480-120-166, which requires telecommunications companies to report the results of its investigation of service-affecting informal complaints to commission staff within two business days from the date commission staff passes the complaint; of non-service-affecting informal complaints to commission staff within five business days from the date the commission staff passes the complaint; and for requests from commission staff for additional information on pending complaints within three days.

Despite repeated notices of violation of WAC 480-120-147(5), you continued to place preferred carrier freezes on customer accounts on 1,304 occasions. Despite repeated notices of violation of WAC 480-12-166, you continued to be non-responsive to commission-referred complaints on 397 occasions. As a result, the Commission hereby notifies you that it has assessed penalties against you in the amount of \$143,100.

The basis for the penalties is as follows:

#### *Preferred carrier freeze*

Commission staff first notified Tel West of the requirements of WAC 480-120-147(5) in September 2003, during the course of an informal complaint, and continued to remind Tel West of these requirements over the next several months.

This rule is not unique to Washington State, and these are not new rules. The Federal Communications Commission (FCC), in §64.1190, states that local exchange companies that offer a preferred carrier freeze must verify the authorization from the customer in the same way that state rules require verification. Both the Commission and the FCC have had this rule in effect since mid-2000.

The Commission believes that Tel West was provided with sufficient information to correct its third party verification process to include authorization of the preferred carrier freeze no later than the end of November 2003. However, Tel West did not change its verification practices to include this customer authorization until at least February 29, 2004.

Based on information provided by the company, the Commission determined that Tel West placed preferred carrier freezes on at least 1,034 customer accounts between December 1, 2003, and February 29, 2004, without the customers' authorization.

Penalties are assessed totaling \$103,400 for 1,034 violations of WAC 480-120-147(5).

#### ***Response to Commission-Referred Complaints***

The Commission adopted new rules governing telephone companies effective July 1, 2003. The Commission sent copies of the new rules to all registered telecommunications companies, including Tel West.

From July 2003 to April 2004, commission staff repeatedly informed Tel West of the requirements in the WAC 480-120-166. During that time period, in 34 of 77 complaints, Tel West did not respond within relevant response time requirement when commission staff referred complaints or requested additional information, despite the fact that commission staff continued to remind the company of these requirements. In those 34 complaints, a total of 397 violations was found for each business day a complete response was not received by from Tel West.

Penalties are assessed totaling \$39,700 for 397 violations of WAC 480-120-166.

Penalties are due and payable upon receipt of this penalty notice. If for any reason you believe the violations described did not occur, you may request a hearing to contest the occurrence of the violations. If you have an explanation as to why the violations occurred, or have other facts you believe the Commission should have considered, RCW 80.04.405 provides that you may make application for mitigation of this penalty. To do so, complete the enclosed mitigation form and return it to the Washington Utilities and Transportation Commission, Post Office Box 47250,

Olympia, Washington 98504-7250, within FIFTEEN (15) days of your receipt of this penalty notice. You may, although you are not required to, present your request for mitigation at a hearing. The Commission will consider your plea and notify you of its determination.

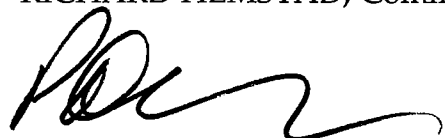
If you would like a hearing to contest either the occurrence of the violations or the amount of the penalty, you may request one in your request for hearing or mitigation. If you request a hearing for either reason, please state why you believe a hearing is called for in your circumstances.

Failure to request a hearing to contest the occurrence of the violations or the amount of the penalty, return the mitigation plea, or pay the amount due within 15 days will cause the Commission to refer this matter to the Office of the Attorney General for collection. Suit may then be brought against you and after trial, judgment may be entered against you.

DATED at Olympia, Washington and effective this 23 day of June, 2004.

  
MARILYN SHOWALTER, Chairwoman

  
RICHARD HEMSTAD, Commissioner

  
PATRICK OSHIE, Commissioner

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**APPLICATION FOR MITIGATION OF PENALTIES**

I have read and understand RCW 9.72.030, which prescribes penalties for making false affidavits (printed below), and hereby make, under oath, application for mitigation of the penalties (as described on the attached form), for the following reasons:

**NOTE:** This form must be completed, signed and notarized, and received by the Commission within 15 days of your receipt of this form.

I swear that the foregoing is a true and complete statement of the facts in this case.

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Signature of Applicant

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_

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NOTARY PUBLIC in and for the  
State of Washington, residing in

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RCW 9.72.030:

"Perjury-Second Degree: Every person who, whether orally or in writing, and whether as a volunteer or in a proceeding or investigation authorized by law, shall knowingly swear falsely concerning any matter whatsoever shall be guilty of perjury in the second degree and shall be punished by imprisonment in the state penitentiary for not more than five years or by imprisonment in the county jail for not more than one year."