

**STAFF INVESTIGATION  
INTO THE COMPLAINT RESPONSE PRACTICES OF  
Marathon Communications, Inc.**

**Docket No. UT-051509**

**Prepared by  
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Business Practices Investigation Section  
Compliance Specialist  
January 2006**

## **PURPOSE, SCOPE, AND AUTHORITY**

### **Purpose**

The purpose of Docket Number UT-051509 is an investigation into the complaint response practices of Marathon Communications, Inc. (Marathon) by the Staff of the Washington Utilities and Transportation Commission (Commission). Specifically, the investigation focuses on the company's response to Commission Staff during the course of an informal complaint.

### **Scope**

The scope of the investigation focuses on informal complaints filed with the Consumer Affairs Section of the Commission by customers of Marathon from January 2005 through December 2005.

### **Authority**

Staff undertakes this investigation under the authority of the Revised Code of Washington (RCW) 80.01.040, which directs the Commission to regulate telecommunications companies in the public interest, and to adopt such rules and regulations as may be necessary to do so. The Commission has adopted such rules in Washington Administrative Code (WAC) 480-120-166, which sets requirements for companies in responding to customer complaints. In addition, RCW 80.04.070 makes it clear that the Commission is authorized to conduct such an investigation. See Appendix A for copies of the appropriate laws and rules.

## INVESTIGATION

### Introduction

This investigation was initiated by allegations contained in Commission customer complaints that Marathon violated Washington Administrative Code (WAC) 480-120-166(6), 480-120-166(7), and 480-120-166(8). Commission Consumer Affairs Staff, responsible for managing customer complaints, states that Marathon failed to respond as required by rule to Commission Staff in a number of complaints filed with the Commission by customers of Marathon.

### Company Information

Marathon is a competitively classified telecommunications carrier providing local and long distance services in the state of Washington. The Commission granted registration to provide service in Washington on June 19, 1991. Marathon's 2004 Annual Report indicated gross intrastate revenues of \$682,366. Marathon lists its location as 1550 North 34th Street #200, Seattle, Washington 98103.

### Rule Requirements

WAC 480-120-166 states, in part:

(6) "Unless another time is specified in this rule or unless commission staff specifies a later date, the company must 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 to the company."

(7) "Unless another time is specified in this rule or unless commission staff specifies a later date, the company must report the results of its investigation of nonservice-affecting informal complaints to commission staff within five business days from the date commission staff passes the complaint to the company."

(8) "Unless another time is specified in this rule or unless commission staff specifies a later date, the company must provide complete responses to requests from commission staff for additional information on pending informal complaints within three business days."

### **Technical Assistance**

During the course of investigating customer complaints and working with Marathon on those complaints, Consumer Affairs Staff provided clear, consistent technical assistance to Marathon regarding the requirements of WAC 480-120-166. During 2004, Staff provided technical assistance to Marathon regarding the rule response requirements on at least seventeen different occasions. See Appendix B for a complete description of the technical assistance provided by Staff to Marathon during the course of the customer complaint processing in 2004.

Staff issued a total of 122 violations of WAC 480-120-166 against Marathon between July 14, 2004 and December 2, 2004.

In addition to technical assistance provided to Marathon through the customer complaint process, Staff, in complaint 93280, provided clear direction to the company in a letter from Carole J. Washburn, Executive Secretary, dated July 7, 2005, regarding the company's obligation under the rules to respond to customer complaints filed at the Commission. A copy of this letter is included in Appendix C.

Because Staff had received no response to the July 7, 2005, letter, on July 19, 2005, Tani Thurston, Commission Staff, contacted Marathon's CEO, Marcos Melendez, by telephone. Mr. Melendez told Ms. Thurston that the compliance letter had not yet been received by Marathon because, due to a recent office move, all mail was held at the U.S. Post Office. Ms. Thurston recalled the contents of the letter to Mr. Melendez. Mr. Melendez committed to contacting the Marathon staff member responsible for responding to the Commission, Christopher Gillen. Mr. Melendez also provided Staff with a current phone number for Mr. Gillen and a new mailing address for Marathon. Staff left a voicemail message for Mr. Gillen stating the company is in violation for non-response. Staff has received no further response to complaint 93280 from Marathon.

### **Analysis of Informal Complaints**

For the purpose of this investigation, Staff reviewed a total of thirteen complaints filed with the Commission after January 1, 2005. These complaints occurred after Consumer Affairs Staff provided technical assistance to Marathon on at least seventeen occasions in 2004.

In ten of the thirteen complaints, the company did not respond timely when Staff either referred a complaint to the company or requested additional information during an ongoing investigation, even though Staff repeatedly reminded the company of this requirement.

Marathon did not respond within the required number of days, as required by Commission rule, as illustrated in the following chart. See Appendix D for a full description of each complaint as it relates to Staff's requests for information and Marathon's failure to provide that information timely.

Complaint Number	Date Passed or Information Request Date	Due Date for Company's Response	Date Company's Response was Received	WAC Violation	Number of Days in Violation
93239	April 19	April 26	April 28	480-120-166(7)	2
	May 4	May 9	May 16	480-120-166(8)	5
	May 16	May 19	May 24	480-120-166(8)	3
93280	May 3	May 6	May 16	480-120-166(8)	6
	May 31	June 3	A	480-120-166(8)	145
93536	May 18	May 20	May 24	480-120-166(6)	2
	June 2	June 7	B	480-120-166(8)	74
93893	June 23	June 30	July 29	480-120-166(7)	20
	September 14	September 21	November 10	480-120-166(7)	36
93939	June 28	June 30	July 26	480-120-166(6)	17
94223	July 26	July 29	November 14	480-120-166(8)	74
	August 2	August 5	November 14	480-120-166(8)	69
94245	August 5	August 10	November 17	480-120-166(8)	69
	August 11	August 16	November 17	480-120-166(8)	65
94867	September 16	September 23	November 10	480-120-166(7)	34
95056	October 4	October 11	November 14	480-120-166(7)	23
95208	October 19	October 26	November 9	480-120-166(7)	10
<b>TOTAL VIOLATIONS</b>					<b>654</b>

A) Staff has received no response from the company as of January 10, 2005. The number of violations is counted only through December 31, 2005.

B) This complaint was closed on September 21, 2005, without further contact from the company. Violations are calculated to date of closure.

## FINDINGS

Staff found a total of 654 violations since January 1, 2005, where Marathon failed to respond to Commission Staff within the required two, three, or five business days to complaints filed with the Commission by customers of Marathon. Marathon is subject to total penalties of \$65,400 (654 violations; \$100 penalty for each violation).

**APPENDIX A**  
**STATUTES AND RULES**

**RCW 80.01.040**

**General powers and duties of commission.**

The utilities and transportation commission shall:

(1) Exercise all the powers and perform all the duties prescribed therefore by this title and by Title 81 RCW, or by any other law.

(2) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging in the transportation by whatever means of persons or property within this state for compensation, and related activities; including, but not limited to, air transportation companies, auto transportation companies, express companies, freight and freight line companies, motor freight companies, motor transportation agents, private car companies, railway companies, sleeping car companies, steamboat companies, street railway companies, toll bridge companies, storage warehousemen, and wharfingers and warehousemen.

(3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, electrical companies, gas companies, irrigation companies, telecommunications companies, and water companies.

(4) Make such rules and regulations as may be necessary to carry out its other powers and duties.

[1985 c 450 § 10; 1961 c 14 § 80.01.040. Prior: (i) 1949 c 117 § 3; Rem. Supp. 1949 § 10964-115-3. (ii) 1945 c 267 § 5; Rem. Supp. 1945 § 10459-5. (iii) 1945 c 267 § 6; Rem. Supp. 1945 § 10459-6. Formerly RCW 43.53.050.]

**NOTES: Severability -- Legislative review -- 1985 c 450: See RCW 80.36.900 and 80.36.901.**

Flaggers -- Safety standards: RCW 49.17.350.

**WAC 480-120-166 Commission-referred complaints.** (1) Each company must keep a record of all complaints concerning service or rates for at least two years and, on request, make them readily available for commission review. The records must contain complainant's name and address, date and the nature of the complaint, action taken, and final result.

(2) Each company must have personnel available during regular business days to respond to commission staff.



(3) Applicants, customers, or their authorized representatives, may file with the commission an informal complaint as described in WAC 480-07-910 (Informal complaints) or a formal complaint against a company when there are alleged violations of statutes, administrative rules, or tariffs as provided by WAC 480-07-370 (Pleadings -- General).

(4) When the commission staff refers an informal complaint to a company, the company must:

(a) Stop any pending action involving the issues raised in the complaint provided any amounts not in dispute are paid when due (e.g., if the complaint involves a disconnect threat or collection action, the disconnect or collection must be stopped);

(b) Thoroughly investigate all issues raised in the complaint and provide a complete report of the results of its investigation to the commission, including, if applicable, information that demonstrates that the company's action was in compliance with commission rules; and

(c) Take corrective action, if warranted, as soon as appropriate under the circumstances.

(5) Commission staff will ask the customer filing the informal complaint whether the customer wishes to speak directly to the company during the course of the complaint, and will relay the customer's preference to the company at the time staff opens the complaint.

(6) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must 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 to the company. Service-affecting complaints include, but are not limited to, nonfunctioning or impaired services (i.e., disconnected services or those not functioning properly).

(7) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must report the results of its investigation of nonservice-affecting informal complaints to commission staff within five business days from the date commission staff passes the complaint to the company. Nonservice-affecting complaints include, but are not limited to, billing disputes and rate quotes.

(8) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must provide complete responses to requests from commission staff for additional information on pending informal complaints within three business days.

(9) The company must keep commission staff informed when relevant changes occur in what has been previously communicated to the commission and when there is final resolution of the informal complaint.

(10) An informal complaint opened with the company by commission staff may not be considered closed until commission staff informs the company that the complaint is closed.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 05-03-031 (Docket No. UT 040015, General Order No. R-516), § 480-120-166, filed 1/10/05, effective 2/10/05; 03-24-028 (General Order R-510, Docket No. A-010648), § 480-120-166, filed 11/24/03, effective 1/1/04; 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-166, filed 12/12/02, effective 7/1/03.]

**RCW 80.04.070**

**Inspection of books, papers, and documents.**

The commission and each commissioner, or any person employed by the commission, shall have the right, at any and all times, to inspect the accounts, books, papers and documents of any public service company, and the commission, or any commissioner, may examine under oath any officer, agent or employee of such public service company in relation thereto, and with reference to the affairs of such company: PROVIDED, That any person other than a commissioner who shall make any such demand shall produce his authority from the commission to make such inspection.

[1961 c 14 § 80.04.070. Prior: 1911 c 117 § 77; RRS § 10415.]

**APPENDIX B**  
**STAFF PROVIDED TECHNICAL ASSISTANCE**

**1) July 14, 2004:**

On July 14, 2004, Tani Thurston, Consumer Affairs Staff, sent an electronic mail message (e-mail) to Marathon company representative Christopher Gillen, informing Mr. Gillen of the two-day response requirement in WAC 480-120-166(6) in complaint 89943. Ms. Thurston opened complaint 89943 with Marathon on July 9, 2004. Since this was a service-affecting complaint, Marathon was required under the rules to respond within two business days. Marathon did not respond within the required two business days. In Ms. Thurston's July 14 e-mail to Mr. Gillen, she stated, "Violation noted: WAC 480-120-166(6) Failure to report results of investigation to commission staff within 2 business days."

**2) July 22, 2004:**

On July 22, 2004, Lynda Johnson, Consumer Affairs Staff, sent an e-mail to Marathon company representative Adrian Hoppel, informing Mr. Hoppel of the five business day response requirement in WAC 480-120-166(7) in complaint 89864. Ms. Johnson opened complaint 89864 with Marathon on July 2, 2004. Since it was a nonservice-affecting complaint, Marathon was required under the rule to respond within five business days. Marathon did not respond within the required five business days. In Ms. Johnson's July 22 e-mail sent to Mr. Hoppel, she stated, "The complaint was sent to Adrian Hoppel on 7/2/04 and no initial response was received. I have cited a violation of WAC 480-120-166(7), the 5-day non-service affecting response rule, and will continue to cite violations until a response is received." Mr. Gillen responded that Marathon had not received the complaint initially and Ms. Johnson resent the complaint to Mr. Gillen on July 22, 2004. However, on August 12, 2004, Ms. Johnson again sent an e-mail to Mr. Gillen notifying him of the daily violations for Marathon's continued non-response to the complaint. On August 20, Ms. Johnson closed the complaint with Marathon, sending Mr. Gillen an e-mail stating, "This complaint can be closed with a total of 17 violations of WAC 480-120-166(7), the 5-day non-service affecting response rule."

**3) July 22, 2004:**

On July 22, 2004, Lynda Johnson, Consumer Affairs Staff, sent an e-mail to Marathon company representative Adrian Hoppel, informing Mr. Hoppel of the five business day response requirement in WAC 480-120-166(7) in complaint 89875. Ms. Johnson opened complaint 89875 with Marathon on July 2, 2004. Since it was a nonservice-affecting complaint, Marathon was required under the rule to respond within five business days. Marathon did not respond within the required five business days. In Ms. Johnson's July 22 e-mail to Mr. Hoppel, she stated, "This complaint was sent to Adrian Hoppel on 7/2/04 and no initial response was received. I have cited a violation of WAC 480-120-166(7), the 5-day non-service affecting response rule, and will continue to cite violations until a response is received." On August 20, 2004, Ms. Johnson sent an e-mail to Christopher Gillen stating, "This complaint can be closed with 22 violations of WAC 480-120-166(7), the 5-day non-service effecting response rule."

**4) July 22, 2004:**

On July 22, 2004, Lynda Johnson, Consumer Affairs Staff, sent an e-mail to Marathon company representative Adrian Hoppel, informing Mr. Hoppel of the five business day response requirement in WAC 480-120-166(7) in complaint 89876. Ms. Johnson opened complaint 89876 with Marathon on July 2, 2004. Since it was a non-service affecting complaint, Marathon was required under the rule to respond within five business days. Marathon did not respond within the required five business days. In Ms. Johnson's July 22 e-mail to Mr. Hoppel, she stated, "This complaint was sent to Adrian Hoppel on 7/2/04 and no initial response was received. I have cited a violation of WAC 480-120-166(7), the 5-day non-service affecting response rule, and will continue to cite violations until a response is received."

**5) July 22, 2004:**

On July 22, 2004, Lynda Johnson, Consumer Affairs Staff, sent an e-mail to Marathon company representative Adrian Hoppel, informing Mr. Hoppel of the five business day response requirement in WAC 480-120-166(7) in complaint 89888. Ms. Johnson opened complaint 89888 with Marathon on July 6, 2004. Since it was a nonservice-affecting complaint, Marathon was required under the rule to respond within five business days. Marathon did not respond within the required five business days. In Ms. Johnson's July 22 e-mail to Mr. Hoppel, she stated, "This complaint was sent to Adrian Hoppel on 7/6/04 and no initial response was received. I have cited a violation of WAC 480-120-166(7), the 5-day non-service affecting response rule, and will continue to cite violations until a response is received."

**6) July 29, 2004:**

On July 29, 2004, Roger Kouchi, Consumer Affairs Staff, sent an e-mail to Marathon company representative Adrian Hoppel, informing Mr. Hoppel of the two and five day response requirement in WAC 480-120-166(6) and (7), respectively, in complaint 89967. Mr. Kouchi opened complaint 89967 with Marathon on July 12, 2004. Since it was a nonservice-affecting complaint, Marathon was required under the rule to respond within five business days. Marathon did not respond within the required five business days. In Mr. Kouchi's July 29 e-mail to Mr. Hoppel, he stated, in part, "I passed this complaint on 7/21/04. No response as of 7/29/04. Recorded violation for failure to provide initial response within the required 5-business days...The company must 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 to the company [WAC 480-120-166(6)]...The company must report the results of its investigation of non-service-affecting informal complaints to commission staff within five business days from the date commission staff passes the complaint to the company [WAC 480-120-166(7)]."

**7) August 20, 2004:**

On August 20, 2004, Nancy Paulson, Consumer Affairs Staff, sent an e-mail to Marathon company representative Christopher Gillen, informing Mr. Gillen of the three day response requirement in WAC 480-120-166(8) in complaint 89846. Ms. Paulson requested additional information in complaint 89846 on July 23, 2005. In Ms. Paulson's August 20 e-mail to Mr. Gillen, she stated, in part, "I will be citing the following violation. WAC 480-120-166(8) states the company must provide complete responses to requests from commission staff for additional information within three business days."

**8) August 20, 2004:**

On August 20, 2004, Nancy Paulson, Consumer Affairs Staff, sent an e-mail to Marathon company representative Christopher Gillen, informing Mr. Gillen of the two-day response requirements in WAC 480-120-166(6) in complaint 90386. Ms. Paulson opened complaint 90386 with Marathon on August 9, 2004. Since it was a service-affecting complaint, Marathon was required under the rule to respond within two business days. Marathon did not respond within the required two business days. In Ms. Paulson's August 20 e-mail to Mr. Gillen, she stated, "I will be citing the following violation. WAC 480-120-166(6) states the company must report the results of its investigation of service-affecting complaints within two business days."

**9) August 20, 2004:**

On August 20, 2004, Lynda Johnson, Consumer Affairs Staff, sent an e-mail to Marathon company representative Christopher Gillen, informing Mr. Gillen of the five business day response requirement in WAC 480-120-166(7) in complaint 90221. Ms. Johnson opened complaint 90221 with Marathon on July 28, 2004. Since it was a nonservice-affecting complaint, Marathon was required under the rule to respond within five business days. Marathon did not respond within the required five business days. In Ms. Johnson's August 20 e-mail to Mr. Gillen, she stated, "I have not received an initial response on this complaint. Please note violations of WAC 480-120-166(7). Initial response was due 8/4/04." In Ms. Johnson's August 27 e-mail to Mr. Gillen, she stated, "This complaint can be closed with 13 violations of WAC 480-120-166(7), initial response due 8/4, initial response received 8/23."

**10) August 20, 2004:**

On August 20, 2004, Lynda Johnson, Consumer Affairs Staff, sent an e-mail to Marathon company representative Christopher Gillen, informing Mr. Gillen that she was alleging violations for Marathon's failure to respond timely in complaint 90225. Ms. Johnson opened complaint 90225 with Marathon on July 28, 2004. Since it was a service-affecting complaint, Marathon was required under the rule to respond within two business days. In Ms. Johnson's August 20 e-mail to Mr. Gillen, she stated, "Please note violations of WAC 480-120-166(7) for late response. Initial response was due 8/4/04." On August 27, 2004, Ms. Johnson requested additional information from Mr. Gillen by e-mail. Mr. Gillen did not respond. On September 17, 2004, Ms. Johnson again asked Mr. Gillen for additional information. Again, Mr. Gillen did not respond. In Ms. Johnson's October 13 e-mail to Mr. Gillen, she stated, "This complaint can be closed with 13 violations of WAC 480-120-166(7) for late initial response, and 29 violations of WAC 480-120-166(8) for no response to additional question asked regarding refund of \$25.61."

**11) August 20, 2004:**

On August 20, 2004, Nancy Paulson, Consumer Affairs Staff, sent an e-mail to Marathon company representative Christopher Gillen, informing Mr. Gillen of the two business day response requirement in WAC 480-120-166(6), in complaint 90386. Ms. Paulson opened complaint 90386 with Marathon on August 9, 2004. Since it was a service-affecting complaint, Marathon was required under the rule to respond within two business days. Marathon did not respond within the required two business days. In Ms. Paulson's August 20 e-mail to Mr. Gillen, she stated, "I will be citing the following violation. WAC 480-120-166(6) states the company must report the results of its investigation of service-affecting complaints within two business days."



**12) September 8, 2004:**

On September 8, 2004, Diana Otto, Consumer Affairs Staff, sent an e-mail to Marathon company representative Adrian Hoppel, informing Mr. Hoppel of the two business day response requirement in WAC 480-120-166(6) in complaint 90691. Ms. Otto opened complaint 90691 with Marathon on August 30, 2004. Since it was a service-affecting complaint, Marathon was required under the rule to respond within two business days. Marathon did not respond within the required two business days. In Ms. Otto's September 8 e-mail to Mr. Hoppel, she stated, in part, "I passed this complaint to you on 8/30/04. WAC 480-120-166(6) requires a response within 2 business days due to this being a service affecting complaint. I'm recording a violation for late response and daily violations will be recorded until a response is received."

**13) September 8, 2004:**

On September 8, 2004, Mike Meeks, Consumer Affairs Staff, sent an e-mail to Marathon company representative Christopher Gillen, informing Mr. Gillen of the two business day response requirement in WAC 480-120-166(6) in complaint 89978. Mr. Meeks opened complaint 89978 with Marathon on July 12, 2004. Since it was a service affecting complaint, Marathon was required under the rule to respond within two business days. Marathon did not respond within the required two business days. In Mr. Meeks' September 8 e-mail to Mr. Gillen, he stated, in part, "At this time, I am closing this complaint with 27 violations of 480 120 166 (6) for not responding within two business day time frame."

**14) September 16, 2005:**

On September 16, 2005, also in complaint number 89846, Ms. Paulson sent Mr. Gillen an e-mail again informing Mr. Gillen that Marathon was in violation of WAC 480-120-166(8) as it had failed to respond to an additional request for information made on September 1, 2004. Ms. Paulson's September 16 e-mail stated, in part, "I will be citing the following violation per WAC 480-120-166(8)...failure to provide response to request for additional information within three business days."

**15) September 16, 2004:**

On September 16, 2004, Mike Meeks, Consumer Affairs Staff, sent an e-mail to Marathon company representative Christopher Gillen, informing Mr. Gillen of the two business day response requirement in WAC 480-120-166(6) in complaint 90821. Mr. Meeks opened complaint 90821 with Marathon on September 8, 2004. Since it was a service-affecting complaint, Marathon was required under the rule to respond within two business days. Marathon did not respond within the required two business days. In Mr. Meeks' September 16, 2004, e-mail to Mr. Gillen, he stated, in part, "I have recorded 2 violations of WAC 480-120-166(6) for failure to respond within the 2 business day requirement for urgent, service-affecting complaints. Please advise if you dispute."

**16) November 9, 2004:**

On November 9, 2004, Nancy Paulson, Consumer Affairs Staff, sent an e-mail to Marathon company representative Christopher Gillen, informing Mr. Gillen of the five business day response requirement in WAC 480-120-166(7) in complaint 91523. Ms. Paulson opened complaint 91523 with Marathon on October 28, 2004. Since it was a nonservice-affecting complaint, Marathon was required under the rule to respond within five business days. Marathon did not respond within the required five business days. In Ms. Paulson's November 9 e-mail to Mr. Gillen, she stated, in part, "I will be citing the following violation per WAC 480-120-166(7) failure to respond to the complaint within five business days. Complaint sent 10/28/04, response due 11/4/04. No response to date."

**17) November 9, 2004:**

On November 9, 2004, Nancy Paulson, Consumer Affairs Staff, sent an e-mail to Marathon company representative Christopher Gillen, informing Mr. Gillen of the five-day response requirements in WAC 480-120-166(7) in complaint 91523. Ms. Paulson opened complaint 91523 with Marathon on October 28, 2004. Since this was a nonservice-affecting complaint, Marathon was required under the rules to respond within five business days. Marathon did not respond within the required five business days. On November 9, Ms. Paulson sent an e-mail to Mr. Gillen, stating, in part, "I will be citing the following violation per WAC 480-120-166(7) failure to respond to the complaint within five business days. Complaint sent 10/28/04, response due 11/4/04."

**APPENDIX C  
COMPLIANCE LETTER**



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250  
(360) 664-1160 • TTY (360) 586-8203

July 7, 2005

Mr. Christopher Gillen  
Marathon Communications Corporation  
1550 N 34<sup>th</sup> St #200  
Seattle, WA 98103

Dear Mr. Gillen:

I am writing regarding the informal complaint filed by Gene Buxton on April 22, 2005, with the Washington Utilities and Transportation Commission against Marathon Communications Corporation (Marathon). Tani Thurston, Regulatory Analyst, is assigned to investigate Mr. Buxton's complaint. This complaint alleges that Marathon did not switch his local service as he requested and switched his long distance service to Comcast Digital Phone without his authorization.

On April 22, 2005, Ms. Thurston emailed this complaint to you asking for a response to the complaint. On April 29, 2005, you e-mailed a response to Ms. Thurston. On May 3, 2005, Ms. Thurston e-mailed you a request for additional information. On May 16, 2005, you e-mailed a response to Ms. Thurston. On May 31, 2005, Ms. Thurston e-mailed you another request for additional information. When Ms. Thurston did not receive a response to this request, she e-mailed you again on June 7, 2005, and, again on June 23, 2005. To date, Ms. Thurston has not received a response to her May 31, 2005, June 7, 2005 or June 23, 2005, requests for additional information.

Washington Administrative Code (WAC) 480-120-166 requires that regulated telecommunication companies respond to Commission-referred consumer complaints with complete investigation results within five business days for nonservice-affecting complaints. In addition, the WAC requires the companies to respond to any subsequent inquiries by Staff regarding the complaint within



Mr. Christopher Gillen  
July 7, 2005  
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three business days. The response to Ms. Thurston's May 31, 2005, request for additional information was due to the Commission on June 3, 2005, which is three business days from the date the request was emailed to you. Until you provide a response to Ms. Thurston answering the specifics of this request, this complaint will remain open, and a violation will be noted for each day a response has not been received.

According to state statute, the Commission is authorized to assess penalties of up to \$1,000 per day for violation of Commission rules. Specifically, you must provide Mr. Buxton's account history from January 1, 2004 to date. If you do not respond to Ms. Thurston with this information by July 18, 2005, Staff will recommend the Commission assess penalties for violation of WAC 480-15-890.

If you have questions regarding this complaint or the violations, please feel free to contact Ms. Thurston directly at 360-664-1110.

Sincerely,



Carole J. Washburn  
Executive Secretary

cc: Tani Thurston, Regulatory Analyst  
David Pratt, Assistant Director for Consumer Affairs  
Business Practices Investigations

**APPENDIX D**  
**COMPLAINTS WITH DELAYED OR ABSENT RESPONSES**

**1) Customer Wolfe, Complaint 93239:**

Diana Jones-Suits, Consumer Affairs Staff, contacted the company on April 19, 2005, to refer a complaint filed by Customer Wolfe. At that time, Ms. Jones-Suits informed the company that Marathon's response to the complaint was due on or before April 26, 2005. On April 28, 2005, Ms. Jones-Suits sent an e-mail to Marathon stating, in part, "An initial response was due regarding this complaint on or before 4/26/05. To date, I have not received a response. I am noting daily violations of WAC 480-120-166(7). Please respond." The company responded on the afternoon of April 28.

On May 4, 2005, Staff requested additional information in complaint 93239 via e-mail. Marathon's response was due May 9, 2005. On May 10, Ms. Jones-Suits sent an e-mail to Marathon stating she had recorded one violation of WAC 480-120-166(8). Ms. Jones-Suits again requested a response to her question. Marathon responded on May 16, 2005.

Further, Staff requested additional information in complaint 93239 on May 16, 2005. Marathon's response was due May 19, 2005. The company did not respond until May 24, 2005.

**2) Customer Buxton, Complaint 93280:**

Tani Thurston, Consumer Affairs Staff, contacted the company on April 22, 2005, to refer a complaint filed by Customer Buxton. Although the company provided its initial response timely, it failed to respond to a request for additional information made on May 3, 2005. Marathon's response was due on May 6, 2005; it was not received until May 16, 2005.

In addition, Marathon failed to respond timely to a request for additional information made by Staff on May 31, 2005. Marathon's response was due June 3, 2005. On June 7, 2005, Staff sent an e-mail to Marathon stating, "I do not see a response to this request. The response was due 6-3-05." Marathon did not respond to Staff. On June 23, 2005, Staff attempted to contact Marathon by telephone. All Marathon staff contact phone numbers were disconnected. Staff called Marathon's toll-free number and was informed that Marathon company representative Christopher Gillen would provide a response to Staff that day. Mr. Gillen did not respond to Staff.

On July 7, 2005, under complaint number 93280, Staff sent Marathon a compliance letter signed by Carole Washburn, Executive Secretary, notifying it that it was in violation of WAC 480-120-166, and requesting it provide specific customer account information by July 18, 2005, or Staff would recommend the Commission assess penalties for violations

of WAC 480-120-166 (the actual letter contained a typo and quoted WAC 480-15-890 in reference to penalties). See Appendix B.

On July 19, 2005, Tani Thurston contacted Marathon's CEO, Marcos Melendez, by telephone. Mr. Melendez told Staff that the compliance letter had not yet been received by Marathon because, due to a recent office move, all mail was held at the U.S. Post Office. Staff briefed Mr. Melendez on Marathon's failure to respond to Commission complaints and the requirements stated in the compliance letter and Mr. Melendez committed to contacting the Marathon staff member responsible for responding to the Commission, Christopher Gillen. Mr. Melendez also provided Staff with a current phone number for Mr. Gillen and a new mailing address for Marathon. Staff left a voicemail message for Mr. Gillen stating the company is in violation for nonresponse. As of the date this report was prepared, Staff has received no further response to complaint 93280 from Marathon.

**3) Customer Loveless, Complaint 93536:**

Diana Jones-Suits, Consumer Affairs Staff, contacted the company on May 18, 2005, to refer a complaint filed by Customer Loveless. At that time, Staff stated, in part, "Please respond to DJ Suits on or before 5/20/05." The company did not respond until May 24, 2005.

On June 2, 2005, in complaint 93536, Staff requested additional information be provided by Marathon. As of the date this report was prepared, Marathon has failed to respond to that request or subsequent requests for a response made on June 8, 2005, June 16, 2005, June 29, 2005, and July 27, 2005. In Staff's June 29, 2005, e-mail, Staff stated, in part, "...please respond to my 6/2/05 e-mail. To date, I have not received a response. I am noting daily violations of 480-120-166(8), company fails to respond to the Commission's request." The complaint was closed on September 21, 2005, without further contact from Marathon.

**4) Customer Shinn, Complaint 93893:**

Roger Kouchi, Consumer Affairs Staff, contacted the company on June 23, 2005, to refer a complaint filed by Customer Shinn. Marathon's response was due June 30, 2005. The company did not respond until July 29, 2005, even though Staff notified the company it was in violation of WAC 480-120-166(7) on July 13, 2005, July 20, 2005, and July 27, 2005.

Although the complaint was closed on July 29, 2005, on September 14, 2005, Staff notified Marathon that the investigation had been reopened that same day due to the customer reporting continued mis-billing. At that time, Staff requested Marathon's



response to the customer's allegation. Marathon's response was due September 21, 2005. Marathon did not respond to that request for a response, or following notifications by Staff on September 22, 2005, September 27, 2005, October 20, 2005, and October 28, 2005, that it was in violation of WAC 480-120-166(7), until November 10, 2005. In each of Staff's requests for a response from the company, Staff stated, in part, "Company failed to respond within the required 5 business days. Recorded Violation of WAC 480-120-166(7). Please respond to this complaint."

Further, in each request for a response, Staff provided the WAC language, stating, "WAC 480-120-166 (7) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must report the results of its investigation on nonservice-affecting informal complaints to commission staff within five business days from the date commission staff passes the complaint to the company. Nonservice-affecting complaints include, but are not limited to, billing disputes and rate quotes."

**5) Customer DeWalt, Complaint 93939:**

Gail Griffin-Wallace, Consumer Affairs Staff, contacted the company on June 28, 2005, to refer a complaint filed by Customer DeWalt. The company's response was due June 30, 2005. The company did not respond until July 26, 2005.

**6) Customer Lopez, Complaint 94223:**

Roger Kouchi, Consumer Affairs Staff, contacted the company on July 22, 2005, to refer a complaint filed by Customer Lopez. Although the company provided its initial response timely, it failed to respond to subsequent requests by Staff for additional information made on July 26 and August 2, 2005. Marathon's responses were due July 29 and August 5, 2005, respectively. In addition, Marathon failed to respond to notifications by Staff that it was in violation of WAC 480-120-166(8), made on August 4, 2005, August 9, 2005, August 12, 2005, August 17, 2005, August 22, 2005, August 25, 2005, August 31, 2005, September 14, 2005, September 19, 2005, and September 23, 2005. In each of Staff's requests for a response from the company, Staff stated, in part, "I requested company respond to following request on 8/2/05...Response was due not later than 8/5/05. Recorded violation of WAC 480-120-166(8) for failure to provide response within the required 3-business days." Marathon responded to Staff on November 14, 2005.

Further, in each request for a response, Staff provided the WAC language, stating, "WAC 480-120-166 (8) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must provide complete responses to requests

from commission staff for additional information on pending informal complaints within three business days."

**7) Customer Roll, Complaint 94245:**

Roger Kouchi, Consumer Affairs Staff, contacted the company on July 26, 2005, to refer a complaint filed by the complainant. Although the company provided its initial response timely, in a July 29, 2005 e-mail to staff, Christopher Gillen stated he was working on reassembling the account billing for the customer. On August 5, 2005, Staff requested an update from the company, stating, "Do you have an update for me?" Marathon's response was due August 10, 2005. Although Staff notified the company by e-mail that it was in violation of WAC 480-120-166(8) on August 15, 2005, August 17, 2004, August 22, 2005, August 25, 2005, August 31, 2005, September 6, 2005, September 9, 2005, September 16, 2005, September 22, 2005, October 7, 2005, October 20, 2005, and October 28, 2005; Marathon failed to respond further to this complaint until November 17, 2005.

In each of Staff's requests for a response from the company, Staff stated, in part, "Requested update on 8/5/05. Response required not later than 8/10/05. Still no response from company. Recorded...violations of WAC 480-120-166(8) for failure to response [sic] to staff's request for information within the required 3-business days."

Further, in each request for a response, Staff provided the WAC language, stating, "WAC 480-120-166 (8) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must provide complete responses to requests from commission staff for additional information on pending informal complaints within three business days."

On August 11, 2005, Staff requested Marathon respond as to whether it was in compliance with WAC 480-120-166(4) as it regarded stopping any pending action involving the issues raised in the complaint while the commission complaint was open. A response was due August 16, 2005. The company responded on November 17, 2005.

**8) Customer Hickmann, Complaint 94867:**

Roger Kouchi, Consumer Affairs Staff, contacted the company on September 16, 2005, to refer a complaint filed by Customer Hickmann. The company's response was due September 23, 2005. Although Staff notified the company it was in violation of WAC 480-120-166(7), on September 26, 2005, October 20, 2005, and October 28, 2005; Marathon failed to provide its initial response to this complaint until November 10, 2005.

In each of Staff's requests for a response from the company, Staff stated, in part, "I passed this complaint on 9/16/05. Initial response due not later than 9/23/05. ...No response received. Recorded violation of WAC 480-120-166(7) for failure to provide the initial response within 5 business days."

Further, in each request for a response, Staff provided the WAC language, stating, "WAC 480-120-166 (7) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must report the results of its investigation of nonservice-affecting informal complaints to commission staff within five business days from the date commission staff passes the complaint to the company. Nonservice-affecting complaints include, but are not limited to, billing disputes and rate quotes."

**9) Customer Kellogg, Complaint 95056:**

Dennis Shutler, Consumer Affairs Staff, contacted the company via fax and phone on October 4, 2005, to refer a complaint filed by Customer Kellogg. The company's response was due October 11, 2005. On October 17, 2005, having received no response to the complaint from Marathon, Mr. Shutler left a voicemail message for Christopher Gillen requesting a response. Mr. Shutler followed up that phone contact by again faxing the complaint to Mr. Gillen. The cover sheet for the fax notified Marathon that Staff was recording violations of WAC 480-120-166(7) every business day until staff received Marathon's response.

On November 7, 2005, having yet to receive a response from Marathon, Mr. Shutler passed the complaint again, this time by e-mail, to Lisa Rucks at Marathon. The next day, Mr. Shutler followed up with a voicemail message requesting a return call to discuss the consumer's complaint and Marathon's response. Mr. Shutler again passed the complaint to Ms. Rucks via e-mail on November 9, 2005. Mr. Shutler also notified Ms. Rucks that daily violations would continue to accrue until staff received the company's initial response to the complaint. Ms. Rucks responded to the complaint on November 14, 2005.

**9) Customer Wise, Complaint 95208**

Pam Smith, Consumer Affairs Staff, attempted to contact Christopher Gillen on October 19, 2005, to refer a complaint filed by Customer Wise. Ms. Smith left a voicemail message for Mr. Gillen requesting an email address to send the complaint to. Marathon's response to the complaint was due October 26, 2005. On October 26, 2005, Ms. Smith again contacted Marathon and spoke with Marathon representative Julia. Ms. Smith informed Julia that Marathon was in violation of the rules for failure to

respond to the complaint and left a request for Mr. Gillen to return her call. On November 1, 2005, still having had no response to the complaint, Ms. Smith again contacted Marathon and requested a response. On November 8, 2005, Ms. Smith faxed the complaint to Lisa Rucks at Marathon. Marathon provided its response to the complaint on November 9, 2005.