

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UT-080455
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	COMPLAINT
)	
v.)	NOTICE OF PREHEARING
)	CONFERENCE
WTI, LLC,)	(Set for March 12, 2009
)	at 1:30 p.m.)
Respondent.)	
)	
.....)	

1 The Commission, on its own motion, and through its Staff, alleges as follows:

I. INTRODUCTION

2 The Washington Utilities and Transportation Commission (Commission), by and
through Commission Staff (Staff), complains of violations of Commission rules
governing the handling of Commission-referred complaints and the cessation of
telecommunications services.

3 As alleged below, WTI, LLC (WTI or Company), failed to timely respond to
Commission- referred complaints, in violation of WAC 480-120-166(6), and failed to
provide proper notice to customers and the Commission of its planned cessation of
telecommunications service, in violation of various provisions of WAC 480-120-083.

II. BACKGROUND INFORMATION

4 On January 10, 2008, a customer filed a complaint with the Commission, stating he
received an automated call on January 9, 2008, informing him that WTI would no longer
be able to provide dial-tone service to him in one week’s time. The customer confirmed
this information on January 10, 2008, when he spoke directly with a WTI representative.

The customer told Staff that he received no notice prior to the automated call informing him that WTI would no longer provide him dial-tone service.

5 Staff forwarded the complaint to WTI on January 10, 2008. In accordance with WAC 480-120-166(6), WTI's response to this service-affecting complaint was due January 14, 2008. WTI did not respond timely to the complaint. On January 16, 2008, WTI responded, and provided Staff with a notice, dated January 10, 2008, that WTI indicated was sent to WTI customers. The notice stated that WTI would cease offering dial-tone service to its customers as of February 10, 2008. In its investigation of the complaint, Staff found that WTI failed to provide this customer with written notice, in violation of WAC 480-120-083(2)(c) or an explanation of how the customer may receive a refund on any unused service, in violation of WAC 480-120-083(4)(c).

6 Between January 10, 2008 and March 11, 2008, the Commission received nine complaints against WTI, and Staff forwarded these complaints to the Company for a response. Staff found that WTI failed to respond timely to all but one of those complaints. Staff notified the Company of violations of WAC 480-120-166(6) for each complaint to which WTI did not timely respond.

7 In seven of the nine complaints, customers stated that WTI had disconnected their dial-tone service without giving them prior notification of disconnection. Staff found that the written notice that WTI stated it provided to these customers in these instances did not give customers sufficient notice in compliance with Commission rules. Also, Staff found that WTI failed to properly follow-up with a second notice to customers as required by Commission rules. As a result, WTI customers lost dial-tone service before they could make alternative arrangements for service. These customers resided in Qwest Corporation's service territory.

8 On March 14, 2008, WTI e-mailed Staff, attaching a copy of a notice that it stated was mailed to customers residing in Verizon Northwest Inc.'s service territory. The letter notified customers of WTI's intent to cease providing dial-tone service to those customers as of April 15, 2008. Staff's investigation found that the written notice to the Commission was incomplete, and did not meet the requirements WAC 480-120-083(3).

9 WTI has been the subject of previous enforcement actions for failure to properly respond to Commission-referred complaints. In May 2007, in Docket UT-070607, the

Commission assessed a \$7,600 penalty against WTI for 76 violations of WAC 480-120-166, including seven violations of WAC 480-120-166(6). In addition, in April 2006, in Docket UT-051509, the Commission assessed a \$16,300 penalty against Marathon Communications, Inc. (Marathon), which at that time was affiliated with WTI, for 163 violations of various provisions of WAC 480-120-166. On October 26, 2006, in Docket UT-061664, Marathon formally notified the Commission that it had stopped doing business and was ceasing telecommunications service in Washington. Staff's prior investigations of Marathon, and the investigation of WTI in this docket, reveal that the companies are affiliated, and also share the same addresses, phone numbers, and contacts.

- 10 Staff completed its investigation in December, 2008. The Investigation Report is attached to this complaint as Attachment A.

III. PARTIES

- 11 The Washington Utilities and Transportation Commission (Commission) is an agency of the State of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including telecommunications companies, under the provisions of RCW Title 80.
- 12 WTI, LLC is a telecommunications company subject to regulation by the Commission pursuant to RCW 80.01.040 and RCW 80.36.

IV. JURISDICTION

- 13 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, RCW 80.04.110, RCW 80.04.380, RCW 80.04.470, and RCW 80.36, and pursuant to WAC 480-120.

V. CLAIMS AND CAUSES OF ACTION

A. First Cause of Action [WAC 480-120-166(6)]

- 14 The Commission, through its Staff, realleges the allegations contained in paragraphs 2 through 13 above.

- 15 WAC 480-120-166(6) requires that, unless another time is specified in the rule or unless Commission staff specifies a later date, a telecommunications 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).
- 16 As specifically alleged in paragraphs 17-24 below, WTI failed to respond to eight Commission complaints filed between January and April, 2008, within two business days as required by WAC 480-120-166(6), for a total of 53 violations of WAC 480-120-166(6). Each day the Company was out of compliance is a continuing, and separate, violation.
- 17 WTI committed two violations of WAC 480-120-166(6) by failing to timely respond to service-affecting Commission complaint No. 102458 within two business days.
- 18 WTI committed nine violations of WAC 480-120-166(6) by failing to timely respond to service-affecting Commission complaint No. 102910 within two business days.
- 19 WTI committed nine violations of WAC 480-120-166(6) by failing to timely respond to service-affecting Commission complaint No. 102917 within two business days.
- 20 WTI committed eleven violations of WAC 480-120-166(6) by failing to timely respond to service-affecting Commission complaint No. 102918 within two business days.
- 21 WTI committed eight violations of WAC 480-120-166(6) by failing to timely respond to service-affecting Commission complaint No. 102922 within two business days.
- 22 WTI committed eight violations of WAC 480-120-166(6) by failing to timely respond to service-affecting Commission complaint No. 102924 within two business days.
- 23 WTI committed one violation of WAC 480-120-166(6) by failing to timely respond to service-affecting Commission complaint No. 102970 within two business days.

24 WTI committed five violations of WAC 480-120-166(6) by failing to timely respond to service-affecting Commission complaint No. 103037 within two business days.

B. Second Cause of Action [WAC 480-120-083(2)(a)]

25 The Commission, through its Staff, realleges the allegations contained in paragraphs 2 through 24 above.

26 WAC 480-120-083(2)(a) states that no telecommunications company may cease the provision of any telecommunications service in all or any portion of the state unless it first provides written notice to the Commission at least 30 days in advance of cessation of service.

27 WTI violated WAC 480-120-083(2)(a) by failing to provide any written notice to the Commission of its February 10, 2008, cessation of its dial-tone telecommunications service.

C. Third Cause of Action [WAC 480-120-083(2)(c)]

28 The Commission, through its Staff, realleges the allegations contained in paragraphs 2 through 27 above.

29 WAC 480-120-083(2)(c) states that no telecommunications company may cease the provision of any telecommunications service in all or any portion of the state unless it first provides written notice to each of its customers at least 30 days in advance of cessation of service.

30 WTI violated WAC 480-120-083(2)(c) on eight occasions by failing to provide the customers identified in Commission-referred complaint Nos. 102458, 102616, 102910, 102917, 102918, 102922, 102924, and 103037 with written notice at least 30 days in advance of cessation of telecommunications service.

D. Fourth Cause of Action [WAC 480-120-083(3)]

31 The Commission, through its Staff, realleges the allegations contained in paragraphs 2 through 30 above.

32 WAC 480-120-083(3) provides that the written notice to the Commission required in WAC 480-120-083(a) must include: (a) the name of the exiting telecommunications company; (b) for each category of service, the date each telecommunications service will cease; and (c) the number of customers for each telecommunications service and their location, described by exchange or by city and county, for each telecommunications service being ceased.

33 WTI violated WAC 480-120-083(3) by failing to provide the proper written notice to the Commission of its April 15, 2008, cessation of telecommunications service. Specifically, the notice provided to the Commission was deficient, in that it did not contain the number of customers for each telecommunications service and their location, described by exchange or by city and county, for each telecommunications service being ceased.

E. Fifth Cause of Action [WAC 480-120-083(4)(c)]

34 The Commission, through its Staff, realleges the allegations contained in paragraphs 2 through 33 above.

35 WAC 480-120-083(4)(c) provides that the notice to customers required in WAC 480-120-083(2)(c) must include an explanation of how customers may receive a refund on any unused service. The exiting telecommunications company must provide information to consumers via its customer service number outlining the procedure for obtaining refunds, and continue to provide this information for 60 days after the date of cessation of service.

36 WTI violated WAC 480-120-083(4)(c) on three occasions with respect to the customers identified in Commission-referred complaint Nos. 102458, 102918, and 103037, by failing to include in its customer notice an explanation of how those customers may receive a refund on any unused service.

F. Sixth Cause of Action [WAC 480-120-083(4)(d)]

37 The Commission, through its Staff, realleges the allegations contained in paragraphs 2 through 36 above.

- 38 WAC 480-120-083(4)(d) provides, in part, that a telecommunications company must provide a *second notice* to customers by one of the following two options: (i) between 10 and 30 days before cessation of service the exiting telecommunications company must complete one direct call advising every customer of the cessation of service, including the date of cessation of service, and a number to call for more information, if necessary; or (ii) at least 10 days before cessation of service, the exiting telecommunications company must provide a second written notice of cessation of service, including the date of cessation of service and a number to call for more information, if necessary.
- 39 WTI violated WAC 480-120-083(4)(d) on seven occasions with respect to the customers identified in Commission-referred complaint Nos. 102458, 102616, 102918, 102922, 102970, and 103037, by failing to properly provide a second notice to those customers by either of the methods required by the rule.

VI. APPLICABLE LAW

- 40 Under RCW 80.04.380, the Commission may penalize a public service company that violates any rule or requirement of the Commission up to \$1,000 for each and every offense. Every violation shall be a separate and distinct offense, and, in the case of a continuing violation, every day's continuance thereof shall be deemed to be a separate and distinct offense.

VII. REQUEST FOR RELIEF

- 41 Staff asks the Commission to find that WTI committed 73 violations of Commission rules, as set forth in the allegations above.
- 42 Staff further requests that the Commission impose monetary penalties on WTI in the amount of \$73,000 under the authority provided by RCW 80.04.380, and order such other and/or further relief as is appropriate under the circumstances.

VIII. PROBABLE CAUSE

43 Based on a review of Staff's report on its investigation of WTI, and all supporting documents, and consistent with RCW 80.01.060, the Commission finds probable cause exists to issue this Complaint.

IX. NOTICE OF PREHEARING CONFERENCE

44 THE COMMISSION GIVES NOTICE That a prehearing conference in this matter will be held on **March 12, 2009, at 1:30 p.m.**, in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive SW, Olympia, Washington. The purpose of the prehearing conference is to consider petitions for intervention, discuss the need for discovery, establish a procedural schedule, and to determine other matters to aid in the disposition of the complaint, as specified in WAC 480-07.

45 The Commission will hear this matter under the Administrative Procedure Act (APA), particularly Part IV of RCW 34.05, relating to adjudications. The provisions of the APA that relate to this proceeding include, but are not limited to, RCW 34.05.413, RCW 34.05.431, RCW 34.05.434, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission will also follow its procedural rules in WAC 480-07 in this proceeding.

46 THE COMMISSION GIVES FURTHER NOTICE THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET BY THIS NOTICE, OR ANY OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH RCW 34.05.440 AND WAC 480-07-450.

47 If any party or witness needs an interpreter or other assistance, please fill out the form attached to this notice and return it to the Commission.

48 The names and mailing addresses of all parties and their known representatives are as follows:

Complainant: Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
PO Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Michael A. Fassio
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
PO Box 40128
Olympia, WA 98504-0128
(360) 664-1192

Respondent: WTI, LLC
Robert F. Baur, Manager
22722 29th Drive SE, Suite 120
Bothell, WA 98021
(425) 949-0055

Representative: Unknown

49 Dennis J. Moss is appointed as the Administrative Law Judge from the Utilities and
Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park
Drive S.W., Olympia, Washington 98504-7250, and will preside at the hearing.

50 Notice of any other procedural phase will be given in writing or on the record as the
Commission may deem appropriate during the course of this proceeding.

DATED at Olympia, Washington, and effective January 30, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Director, Administrative Law Division

Inquiries may be addressed to:
Executive Director and Secretary
Washington Utilities and
Transportation Commission
Richard Hemstad Building
1300 S. Evergreen Park Drive SW
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: David W. Danner, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location:

Primary Language: _____

Hearing Impaired: (Yes)_____ (No)_____

Do you need a certified sign language interpreter?:

Visual_____ Tactile_____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (____)_____