

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

In the Matter of)	DOCKET NO. UT-040572
)	
)	ORDER NO. 02
PENALTY ASSESSMENT AGAINST)	
TEL WEST COMMUNICATIONS, LLC.)	COMMISSION ORDER
)	GRANTING MOTIONS
)	TO CORRECT ORDER;
)	WITHDRAWING ORDER OF
)	DECEMBER 15, 2004
.....)	

1 **Synopsis:** *The Commission grants motions to correct its order of December 15, 2004, in this docket and withdraws that order. A corrected order will be entered.*

2 **Nature of Proceeding:** This matter is an assessment of penalties by the Commission against Tel West Telecommunications, LLC, for alleged violations of laws and rules relating to preferred carrier freezes and for failure to respond to Commission Staff inquiries in a timely manner.

3 **Order on Brief Adjudication:** The Commission entered an order on brief adjudication, resolving the issues in the proceeding, on December 15, 2004, granting mitigation, in part, of the penalties assessed.

4 **Motions to Correct the Order:** Commission Staff and Tel West both ask that the Commission correct certain errors or omissions in the order.

5 Commission Staff notes that the order erred in its calculation of penalties for certain violations and in the assignment of five penalties to the regulation assertedly violated. It asks that the order be corrected.

6 Tel West notes that the order omitted the length of waivers by Staff and Tel West of the time for entry of an order, and asks that the order be amended to state the length of the waivers.

7 Tel West asks that the order be vacated because it was entered after the expiration of the parties' waiver of the statutory time for entry. This is, in essence, a petition for reconsideration that alleges error in process, rather than a motion to correct mistakes in the text of the order. The Commission will not act on that request, as the time for reconsideration has not yet begun to run.¹ However, we note that the consequence of an agency's failure to meet a statutory deadline for action in an APA proceeding is not a bar to any later agency action, but gives rise to a right to petition for judicial review seeking an order compelling performance—the equivalent of a writ of mandamus. *RCW 34.05.574(4)(b)*.

8 In addition, we note that if we granted Tel West's petition to vacate the order, the result would be maintenance of the pre-order *status quo* and, thus, the denial of mitigation and imposition of the entire penalty on Tel West.

9 Both of the motions request corrections that are obvious and ministerial. They do not affect the principles applied in the order or its analysis, and affect its result only in the sense that the correction of an error requires minor recalculation of the mitigation. The requests for correction should be granted, and the Commission will withdraw the prior order, revising and re-entering it as Order No. 03 in this docket, pursuant to WAC 480-07-875(2).

¹ Commission Staff answered Tel West's pleading, voicing no objection to noting the time frame of the parties' waiver although responding to and opposing the request to vacate the order. As noted, we grant the former and determine that the latter is premature.

IV. ORDER

10 The Commission grants the motions to correct the order of December 15, 2004, in this docket. The Commission withdraws its order and will enter a revised order.

DATED at Olympia, Washington and effective this 7th day of January, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.