

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Investigation of **Wilson**)
Communication Company, Inc. of Wilson,)
Kansas, Regarding the Violation of the Motor) Docket No. 20-TRAM-222-PEN
Carrier Safety Statutes, Rules and Regulations)
and the Commission's Authority to Impose)
Penalties, Sanctions and/or the Revocation of)
Motor Carrier Authority.)

**RESPONSE OF WILSON COMMUNICATION COMPANY, INC. IN SUPPORT OF
MOTION FOR ORDER AMENDING PENALTY ASSESSMENT**

COMES NOW Wilson Communication Company, Inc. a Kansas corporation
("Wilson") and submits its Response in support of the Motion of Commission Staff for
an Order amending the penalty assessment issued herein November 26, 2019. In
support of that Motion Wilson states:

1. Prior to the Commission's Penalty Order Wilson had no notice that a
penalty was contemplated in connection with two technical violations of regulations
controlling its operation of a motor carrier. As a result, Wilson had no opportunity to be
heard on matters affecting the appropriateness or extent of a penalty prior to the
penalty being imposed by Order of the Commission.

2. Upon the company's receipt of notice that two technical violations had
been reported Wilson promptly took corrective action recommended by regulatory
personnel. At no time prior to such corrective action was Wilson advised that the
alternative to such corrective action could include a monetary penalty. Wilson had no
notice that such a penalty was intended or likely until after corrective action had been
taken.

3. In support of a reduction of the ordered penalty, and in order to supplement the record as to the violations, Wilson notes the following additional facts not explicitly recited in Staff's Reports.

4. The United States Department of Transportation investigation report provided to Wilson discusses appropriate corrective action in connection with an asserted violation related to driver substance testing. That report states "Procedures should be tailored to company operations." Wilson respectfully suggests its prior policies applied to its infrequent motor carrier activities were designed to meet the intent of this direction and, in fact, satisfied its intent.

5. Wilson's business activity meeting the criteria for definition as a motor carrier is limited. Wilson has need infrequently to transport equipment to and from the site(s) of construction activity incidental to deployment and maintenance of telecommunications facilities. Wilson does not regularly and routinely engage in activities common to the business of a motor carrier and is designated a nonhazardous materials intrastate carrier.

6. While Staff's Reports and information are not inaccurate it should be noted that at no time did USDOT or Kansas state motor carrier enforcement personnel advise or suggest that Wilson could or should be subjected to a penalty in addition to the efforts necessary to assure prospective compliance with applicable regulations.

7. Wilson has been entirely cooperative with all enforcement and compliance activity since the company was made aware of the applicability of the subject requirements noted in Staff's Report. Wilson is unaware of any expression of concern with the actual safety of its operations, nor with the promptness or sufficiency of its corrective actions; rather, the noted violations relate solely to recording the starting and

ending times of subject transportation activities and the method of selection of drivers for periodic substance testing.

8. Wilson respectfully suggests its prior operating methods were wholly sufficient to assure public safety. The company's former driver selection practices were in fact random, and that information regarding the times of transport activity is not a material safety consideration as all company motor carrier activities are necessarily of very short duration within a small geographic area.

9. Wilson has always placed the highest priority on safe operations by its drivers and of its equipment, and no actual event or activity contrary to public safety was involved in the subject technical violations.

10. As to periodic driver testing Wilson's practices, while not in strict compliance with regulations, have held drivers to a higher standard than would have resulted from strict application of those regulations. Wilson's drivers are subjected to random drug and alcohol testing with no prior notice, at a greater frequency than is probable under the "compact" process Wilson has been encouraged to adopt. The selection process for drivers to be tested, while differing from that specified in applicable regulation, is in fact random and applied to only the three Wilson employees having relevant driving responsibilities.

11. Under Wilson's past practice, in use since 2006, one of its three driver-employees has been selected and tested periodically; by comparison, the "compact" selection process recommended to Wilson involves random selection of employees from a current multi-employer pool of 462. The probability of any individual employee being tested for drug use in a given year is 25%, and the probability of testing for alcohol use is 10%; these figures comply with current federal standards.

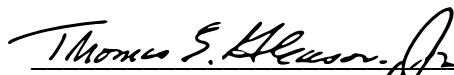
12. The recommended compliance practice accepted and adopted by Wilson actually will result in a lower probability that any Wilson driver-employee will be selected for testing with comparable frequency at any given interval. Under Wilson's past "noncompliant" policy and practice the probability that a given driver would be tested for alcohol *and* drug use in a given year was 67%.

13. Wilson has enrolled in the approved process, but the company reserves the right to continue application of its own process supplementally in order to subject its driver-employees to an increased actual probability of being tested for drug and/or alcohol use.

14. Based on the foregoing Wilson submits the reduction of the originally ordered penalty, as recommended by Commission Staff, is entirely warranted and supported by the facts. Such reduced penalty is the greatest amount justified, given the limited and wholly technical nature of the violations cited, and in fact a further reduction or outright elimination of a penalty would be consistent with public safety and the public interest generally. That said, Wilson supports Staff's recommended reduction.

WHEREFORE Wilson requests that the Commission reduce the penalty ordered herein.

Respectfully submitted,



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Company, Inc.

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF DOUGLAS)

Thomas E. Gleason, Jr., of lawful age, being first duly sworn upon oath, states:

I am an attorney for Wilson Communication Company, Inc. I have read the above and foregoing pleading, and upon information and belief, state that the matters therein appearing are true and correct.

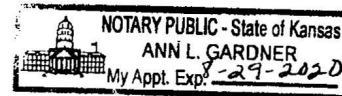

Thomas E. Gleason, Jr.

SUBSCRIBED AND SWORN to before me this 9th day of December, 2019.


Notary Public

My Commission Expires:

8-29-2020



CERTIFICATE OF SERVICE

I, the undersigned Thomas E. Gleason, Jr., attorney for the petitioner, hereby certify that on December __, 2019 I served electronically a true and correct copy of the above and foregoing Amended Petition on the following:

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
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Thomas E. Gleason, Jr.