

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Sue Vanicek, Director of the	)	Application No. 911-020.06/
Nebraska Telephone	)	DC-82
Infrastructure and Public Safety	)	
Department of the Nebraska	)	
Public Service Commission,	)	
	)	
Complainant,	)	
v.	)	
	)	
Cable USA III, LLC;	)	
Centurytel Fiber Company, LLC;	)	
Covista, Inc.; Crexendo Business	)	
Solutions, Inc.; DIECA	)	
Communications, Inc.; DSLNet	)	
Communications, LLC; Geneva	)	
Broadband, LLC; Ionex	)	ORDER DISMISSING COMPLAINT
Communications North, Inc.;	)	IN PART AND SUSTAINING IN
Kentucky Data Link, Inc.;	)	PART
LH Telecom; Long Lines	)	
Siouxland, LLC; Midwestern	)	
Telecommunications, Inc.;	)	
NetTalk.Com, Inc.; Neutral	)	
Tandem-Nebraska, LLC; New Edge	)	
Network, Inc.; NOS	)	
Communications, Inc.;	)	
Reliant Communications, Inc.;	)	
inContact, Inc.; Velocity the	)	
Greatest Phone Company Ever,	)	
Inc.; Wholesale Carrier	)	
Services, Inc.; XO	)	
Communications, LLC	)	
	)	
Respondent(s).	)	Entered: August 7, 2012

BY THE COMMISSION:

On or about May 24, 2011, Sue Vanicek, Director of the Nebraska Telephone Infrastructure and Public Safety Department (Complainant), filed a complaint in this docket alleging a violation of Neb. Rev. Stat. § 86-437. Complainant alleged Respondents failed to timely file with the Commission annual reporting information as required by § 86-437(2) by April 30, 2012. Complainant sought an order assessing administrative fines and ordering Respondents to comply with the reporting requirements. A hearing was held on July 31, 2012, in the Commission Hearing Room, Lincoln, Nebraska, for any respondents who were not previously dismissed from the docket.

All carriers were notified via certified mail of their obligation to file a landline 911 report on or before April 30, 2012. A copy of this letter was entered into the record as Exhibit 6. The Commission also took administrative notice of all previous orders entered in this docket dismissing certain respondents.

The remaining respondents are telecommunications companies generally regulated by the Commission, pursuant to Neb. Rev. Stat. §§ 75-101, et seq. and §§ 86-101 et seq. Respondents are also governed by Title 291, Neb. Admin. Code, Ch. 5 of the Commission's Rules and Regulations.

As part of its regulatory authority and pursuant to § 86-537, the Commission, through its Telecommunications Infrastructure and Public Safety Department, requires telecommunications companies to file a landline 911 report with the Commission in a form prescribed by the Commission on or before April 30<sup>th</sup> of each year. The respondents originally named in the complaint failed to comply with the mandates of Neb. Rev. Stat. § 86-437. Therefore, this Commission, pursuant to its legislative authority, may administratively impose fines on all such companies after notice and public hearing.

Subsequent to the filing of the complaint, the Commission determined that several respondents had satisfactorily submitted annual reports and other respondents did not provide local service to customers in the state of Nebraska in 2011 and thus could be dismissed. All defendants who contacted the Commission were given the option of negotiating a settlement by submitting the required report and signing a stipulation with the Department, wherein each defendant admitted to filing their annual report late and agreed to pay an administrative fine to dismiss the departmental complaint against them.

The remaining respondents either did not contact the Commission or did not agree to the terms of the stipulation. Furthermore, all respondents were notified of the hearing and were entitled to appear. Nonetheless, no carriers made an appearance at the public hearing to show cause as to why fines should not be levied against them.

The following respondents remain in the docket: Ionex Communications North, Inc.(Ionex); LH Telecom; Long Lines Siouxland, LLC (Long Lines); Midwestern Telecommunications, Inc. (Midwestern); NetTalk.com (NetTalk); and Velocity the Greatest

Phone Company Ever, Inc. (Velocity). The hearing with respect to Ionex was continued to September 18, 2012, by a hearing officer order entered July 24, 2012. Therefore, Ionex is not addressed in this order.

Ms. Vanicek testified that LH Telecom, Midwestern, and Velocity did not provide local service in the state of Nebraska in 2011. Consequently, the complaint should be dismissed as to these Respondents.

Ms. Vanicek then testified that Long Lines and NetTalk Inc. had both provided local service in Nebraska in 2011. She stated that the communications annual report filed by Long Lines evidences that Long Lines served a significant number of subscriber access lines and revenue in Nebraska. NetTalk also provided some local service and earned revenue in Nebraska, but in a nominal amount. Because both of these companies should have filed a report and failed to do so, Ms. Vanicek recommended that a fine be levied against both companies according to the established Commission fining policy.

The fining policy specifies that first time offenders of the annual 911 reporting requirement be required to pay a penalty of \$10 per day for the first 30 days the report is overdue and \$100 per day for each day thereafter, to a maximum of \$3,300, plus administrative fees of \$100. As of the date of the hearing, a total of 92 days had passed since the reports were due. Therefore, both Long Lines and NetTalk are eligible to be fined the maximum amount.

Accordingly, consistent with the established fining policy of the Department, an administrative fine should be levied against Long Lines in the amount of \$3,300.00, plus an additional \$100.00 in administrative costs for a total of \$3,400.00.

With respect to NetTalk, the Commission finds the maximum penalty of \$3,300.00 to be excessive in light of the nominal revenues it reported in Nebraska. The Commission therefore finds that a fine in the amount of \$300.00 be assessed against NetTalk, plus an additional \$100 in administrative costs for a total of \$400.00.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that LH Telecom, Midwestern Telecommunications, Inc., and Velocity the Greatest Phone Company Ever, Inc. be, and are hereby, dismissed from the departmental complaint.

IT IS FURTHER ORDERED that a fine be levied against Long Lines Siouxland, LLC consistent with Commission policy in the amount of \$3,300.00, plus an additional \$100.00 in administrative costs for a total of \$3,400.00.

IT IS FURTHER ORDERED that a fine be levied against NetTalk.com, Inc., in the amount of \$300.00, plus an additional \$100 in administrative costs for a total of \$400.00.

MADE AND ENTERED at Lincoln, Nebraska this 14th day of August, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that LH Telecom, Midwestern Telecommunications, Inc., and Velocity the Greatest Phone Company Ever, Inc. be, and are hereby, dismissed from the departmental complaint.

IT IS FURTHER ORDERED that a fine be levied against Long Lines Siouxland, LLC consistent with Commission policy in the amount of \$3,300.00, plus an additional \$100.00 in administrative costs for a total of \$3,400.00.

IT IS FURTHER ORDERED that a fine be levied against NetTalk.com, Inc., in the amount of \$300.00, plus an additional \$100 in administrative costs for a total of \$400.00.

MADE AND ENTERED at Lincoln, Nebraska this 14th day of August, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Tim Schram*

*Gabe Boyce*

*Rod Johnson*

//s// Rod Johnson

Chairman

*Rod Johnson*

ATTEST:

*Shirley L. Hylton*

Executive Director