

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the)	Application No. NUSF-32.08
Commission, on its own motion,)	
seeking to conduct an inquiry)	ORDER SUSTAINING SHOW
into the failure of various)	CAUSE IN PART,DISMISSING
companies to comply with)	SHOW CAUSE IN PART AND,
Commission Rules or Orders and)	ASSESSING ADMINISTRATIVE
to impose administrative fines.)	PENALTIES
)	
)	
)	Entered: November 10, 2009

APPEARANCES:

For Verizon Select Services:

Mr. Steven G. Seglin
Crosby Guenzel, LLP
134 S. 13th Street
Suite 400
Lincoln, Nebraska 68508

For the Commission Staff:

Shana Knutson
300 The Atrium Building
1200 N Street
Lincoln, Nebraska 68508

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

As part of its regulatory authority pursuant to the Nebraska Telecommunications Universal Service Fund Act¹ (the NUSF Act) the Commission has adopted requirements to verify the accuracy of Nebraska Universal Service Fund remittances. Pursuant to *Neb. Rev. Stat. § 86-324(2)(d)*, the Commission "shall require, as reasonably necessary, an annual audit of any telecommunications company to be performed by a third-party certified public accountant to insure the billing, collection, and remittance of a surcharge for universal service. The costs of any audit required pursuant to this subdivision shall be paid by the telecommunications company being audited."

¹ See *Neb. Rev. Stat. § 86-315 et seq.* (Cum. Supp. 2006).

Consistent with this statutory requirement, on April 10, 2007, the Commission entered an Order in Docket No. NUSF-33² adopting remittance audit requirements for all telecommunications carriers contributing to the Nebraska Universal Service Fund (NUSF). As required by Commission Order, remittance audits are to be performed by an independent third party, with audit results for a calendar year being due before the end of the next calendar year.

On March 3, 2009 the Commission initiated this Show Cause proceeding against the following listed companies who either failed to timely file a complete audit report or failed to file an audit report altogether:

Amerivision Communications
Amp'd Mobile
Verizon Select Services
ACN Digital Phone Service
Business Productivity Solutions
Metropolitan Telecommunications
GP Communications
Houlton Enterprises
Quantumshift Communications
Reduced Rate Long Distance
Telrite Corp.
TRI-M Communications

A hearing was held on May 19, 2009, in the Commission Hearing Room, Lincoln, Nebraska after due notice to the affected carriers. Appearances were entered as indicated above.

Mr. Seglin, representing Verizon Select Services (Verizon) requested dismissal of the Show Cause against Verizon. The Commission staff did not oppose dismissal stating the Notice of Audit Requirement was inadvertently mailed to the incorrect address. Once Verizon received notice of the audit requirement, according to the record, Verizon worked with the Commission to file its audit as quickly as possible.

The staff recommended the Commission dismiss the Show Cause against Amp'd Mobile as the Commission's records reflected that Amp'd Mobile had been in bankruptcy since 2007 and had not remitted since 2007. Exhibit No. 3, was the notification that Amp'd Mobile was in bankruptcy, and was offered and received into the record.

² See NUSF- 33, *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to investigate the audit requirements related to the Nebraska Universal Service Fund*, Order (April 10, 2007).

Counsel for the Commission also entered into the record letters filed on behalf of Metropolitan Communications of Nebraska, Inc. and Business Productivity Solutions. Mr. Marashlian requested reduced penalties for his clients naming internal restructuring and limited business in Nebraska as reasons for a reduced penalty. The Commission accepted the letter into the record as Exhibit No. 4. In addition, Mr. Marashlian, representing GP Communications, LLC requested a continuance of the hearing. After the hearing, Mr. Marashlian requested the Commission dismiss the Show Cause against GP Communications, LLC as GP Communications, LLC, provides solely interstate interexchange and special access services and mistakenly filed NUSF remittances claiming intrastate revenue.

O P I N I O N A N D F I N D I N G S

The Commission hereby sustains the Show Cause Order for certain carriers and dismissing the show cause for other carriers named in its March 3, 2009 Order as provided herein.

The record indicated that Houlton Enterprises and Quantumshift Communications failed to file their remittance audits and failed to respond to the Commission's Order to Show Cause altogether. Based on the administrative record and statements of counsel at the hearing we find that Houlton Enterprises and Quantumshift Communications each violated the Commission Order referenced above by failing to file the required audit and then violated the Commission's Show Cause Order by failing to appear. In light of these violations, weighing the gravity and severity of the violations and considering the approved fining policy, the Commission is of the opinion and finds an administrative penalty in the amount of **\$3,300.00** should be assessed. Houlton Enterprises and Quantumshift are each hereby ordered to remit **\$3,300.00** to the Commission within thirty (30) days from the date this order is entered. Houlton Enterprises and Quantumshift are each further ordered to comply with the remittance audit requirement within sixty (60) days from the date of this Order or face further enforcement proceedings to include, but not be limited to, revocation and further civil penalties.

We further find the Show Cause Order should be dismissed as it relates to Verizon Select Services (Verizon). Based on the statements made by Verizon's attorney at the hearing and staff counsel, the Commission erred by failing to send the notice of audit to the address on file that was given to the Commission by the company on a prior occasion. Once Verizon was notified of the

obligation to perform an audit, Verizon made good faith efforts to quickly file its audit. Based on the particular facts in this case as it relates to Verizon, we find Verizon should be dismissed from this Show Cause.

Based on the information in the record and recommendation of Commission staff, the Commission finds that the following penalties should be assessed against the companies for filing the remittance audits after the deadline: Amerivision Communications, **\$580.00**; ACN Digital Telephone Service, **\$250.00**; Business Productivity Solutions, **\$1,000.00**; Ionex Communications, **\$280.00**; Metropolitan Telecommunications, **\$1,000.00**; Reduced Rate Long Distance, **\$580.00**; Telerite Corp., **\$3,300.00**; and TRI-M Communications, **\$250.00**. The penalties assessed in this Order are determined based on the date in which the audits were filed, the size of the remittance revenue to the Commission, and the good faith efforts of the companies in each case to come into compliance with the audit requirements. These amounts reflect a reduced penalty for Metropolitan Telecommunications and Business Productivity Solutions based on the information filed by their attorney. The companies listed above have thirty (30) days from the date of this Order to remit the assessed penalty payable to the Nebraska Public Service Commission.

Finally, in consideration of the information filed by GP Communications after the hearing, the Commission hereby dismisses GP Communications from this proceeding. However, the Commission believes that GP Communications may have been required to file an application to offer telecommunications services in this state as an interexchange carrier. The Commission will investigate this matter further to determine whether a filing is required.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Order to Show Cause is sustained in part as provided herein.

IT IS FURTHER ORDERED that penalties be assessed against Amerivision Communications, ACN Digital Telephone Service, Business Productivity Solutions, Ionex Communications, Metropolitan Telecommunications, Reduced Rate Long Distance, Telerite Corp., and TRI-M Communications for filing their remittance audits after the December 31, 2008 deadline consistent with the findings above. Remittance of the penalties is due no later than thirty (30) days following the date of this Order.

IT IS FURTHER ORDERED that penalties be assessed against Houlton Enterprises and Quantumshift Communications for failing to file their remittance audit as provided above. Remittance audits shall be filed by Houlton Enterprises and Quantumshift Communications no later than sixty (60) days following the date of this Order. Remittance of the penalties assessed herein is due thirty (30) days following the date of this Order.

IT IS FURTHER ORDERED that this Show Cause Order be dismissed as it relates to Verizon Select Services and GP Communications Inc.

MADE AND ENTERED at Lincoln, Nebraska, this 10th day of November, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director