

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) Application No. NUSF-32.12
on its own motion, seeking to)
conduct an inquiry into the)
failure of certain) ORDER SUSTAINING SHOW CAUSE
telecommunications companies to) IN PART AND IMPOSING CIVIL
comply with Commission Rules or) PENALTIES
Orders and to impose)
administrative fines.)
) Entered: June 4, 2013

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

[S]hall 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.

Consistent with this statutory requirement, on April 10, 2007, the Commission entered an Order in Docket No. NUSF-33 adopting remittance audit requirements for all telecommunications carriers contributing to the Nebraska Universal Service Fund (NUSF).² As required by that Order, remittance audits are to be performed by an independent third party, with audit results for a randomly selected audit period. In addition, consistent with that Order, the remittance audits are due on or before December 31st in the year the Commission notified the companies of the audit requirement.

¹ See Neb. Rev. Stat. § 86-315 et seq. (2008).

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).

The following companies failed to timely file a complete audit report that was due on December 31, 2012:

Credit Union Wireless
Net Talk.com
Telenational Communications
Zone Telecom, LLC
Covad Communications Company (fka Speakeasy Broadband Services, LLC)

On April 9, 2013, the Commission entered an Order accepting the late filed waiver request and granting a waiver to Covad Communications Company. Accordingly, Covad Communications Company should be dismissed from this Show Cause Order.³

A Show Cause Hearing was held on April 16, 2013 where the remaining named companies had the opportunity to show cause why they failed to timely comply with the Commission's audit filing requirement and why the Commission should not impose administrative penalties pursuant to *Neb. Rev. Stat. § 75-156* (2009) for failing to timely comply with the Commission rules and orders described herein.

Appearances at the hearing were made as indicated above. The Department called one witness, Ms. Laurie Casados, the Commission's Telehealth Coordinator and Department Policy Analyst, who described Department staff's attempts to obtain compliance from each of the companies named in the Commission's Show Cause Order. The Commission also marked and received into evidence a letter dated March 20, 2013 from Credit Union Wireless.⁴ In relevant part, the letter stated the Commission's request for an audit was not reasonable in relation to the amount of revenue generated by Credit Union Wireless in Nebraska. Consequently, Credit Union Wireless determined it was no longer going to do business in Nebraska. It determined an appearance at the Show Cause hearing was unnecessary. Ms. Casados also explained that after various attempts to contact Telenational Communications, a company representative explained to the Department that it did not have the financial records to conduct an audit for the audit year selected by the Commission.

Mr. Troy Kirk argued for leniency on behalf of Zone Telecom, LLC. According to Mr. Kirk, Zone Telecom, LLC had been undergoing some corporate restructuring and in this process moved its

³ See Transcript Exhibit No. 2.

⁴ See Transcript Exhibit No. 3.

regulatory administration office from New Jersey to Illinois. There were also numerous staff changes. The Commission's notice of audit was sent to and received by a staff member at the company who shortly thereafter left their employment with the company. The internal staff discovered that the original notice was filed away. Once Zone Telecom, LLC realized its error it took immediate steps to determine whether it could apply for a waiver. Zone Telecom, LLC did not meet the Commission's waiver requirements as it received revenue in Nebraska exceeding the \$100,000 threshold. Once notified of this, Mr. Kirk stated, Zone Telecom, LLC identified a firm to conduct the audit and has an engagement letter. Mr. Kirk asked for a waiver of the audit requirement and a waiver of the civil penalty associated with the late filed audit.

Upon consideration of the specific facts and arguments presented by the companies named in the Show Cause order that the following entities should be required to file their remittance audits with the Commission no later than September 16, 2013.

Credit Union Wireless;
Net Talk.com;
Telenational Communications; and
Zone Telecom, LLC

With respect to Credit Union Wireless, the Commission acknowledges that in many cases smaller companies may feel the burden required by remittance audits outweighs the benefits associated with providing service in Nebraska. However, the Commission has provided a means for smaller companies to apply for and receive an audit waiver where said companies are compliant with other Commission requirements. Credit Union Wireless did not qualify for a waiver as it exceeded the number of late-filed remittances allowable by the Commission. The fact that it has discontinued service in Nebraska does not relieve Credit Union Wireless from the remittance audit requirement for the time period for which service was offered. Accordingly, we hereby find Credit Union Wireless must file a remittance audit on or before September 16, 2013. We further find Credit Union Wireless to be in violation of the Commission's Order entered in NUSF-33 on April 10, 2007 by failing to timely file the required audit. Accordingly, we hereby administratively fine Credit Union Wireless an amount of Three Thousand Three Hundred dollars (\$3300.00). Remittance of the penalty is due within thirty (30) days from the date of this Order.

The Commission also finds Net Talk.com must file its remittance audit no later than September 16, 2013. Net Talk.com

is in violation of the Commission's Order entered in Docket No. NUSF-33 on April 10, 2007 by failing to timely file the required remittance audit. Accordingly, we hereby administratively fine Net Talk.com an amount of Three Thousand Three Hundred dollars (\$3300.00). Remittance of this penalty is due within thirty (30) days from the date of this Order.

In light of the circumstances surrounding Telenational Communications, the Commission finds the Department shall work with Telenational Communications to select a different audit period. Telenational Communications will have until September 16, 2013 to file its remittance audit with the Commission. We find although Telenational Communications is in violation of the Commission's Order entered in Docket No. NUSF-33 on April 10, 2007, specific mitigating factors presented by Telenational Communications, and its efforts to work with the Commission to achieve compliance with its Order, merit a reduction in the administrative penalty associated with the late-filed audit. Accordingly, we hereby administratively fine Telenational Communications an amount of Three Hundred Thirty dollars (\$330.00). Remittance of the penalty is due within thirty (30) days from the date of this Order.

Upon consideration of the facts and arguments presented by Mr. Kirk, the Commission is of the opinion and finds that Zone Telecom, LLC shall be required to submit a remittance audit to the Commission no later than September 16, 2013. However, in light of the specific factual circumstances surrounding Zone Telecom, LLC and the mitigating factors including the attempt by Zone Telecom, LLC to immediately come into compliance upon learning of the violation, the Commission finds that the administrative penalty should be waived. The Commission cautions however, the remittance audit required by this Order must be timely filed.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Order to Show Cause shall be and it is hereby sustained relative to Credit Union Wireless, Net Talk.com, Telenational Communications and Zone Telecom, LLC.

IT IS FURTHER ORDERED that the Commission's Order to Show Cause against Covad Communications Company shall be, and it is hereby, dismissed.

IT IS FURTHER ORDERED that Credit Union Wireless, Net Talk.com, Telenational Communications and Zone Telecom, LLC be and they are hereby required to file their remittance audits with the Commission no later than September 16, 2013.

IT IS FURTHER ORDERED that Credit Union Wireless and Net Talk.com each be, and are hereby, ordered to submit payment in the amount of \$3,300 as an administrative penalty for failure to timely comply with the Commission's remittance audit requirements.

IT IS FURTHER ORDERED that Telenational Communications be, and it is hereby, ordered to submit payment in the amount of \$330.00 as an administrative penalty for failure to timely comply with the Commission's remittance audit requirements.

IT IS FURTHER ORDERED that Credit Union Wireless, Net Talk.com, and Telenational Communications shall remit payment of the ordered penalty amounts to the Nebraska Public Service Commission within thirty (30) days from the date of this Order.

MADE AND ENTERED at Lincoln, Nebraska, this 4th day of June, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

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MADE AND ENTERED at Lincoln, Nebraska, this 4th day of June, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:




Chair



//s//Anne C. Boyle
//s//Frank E. Landis

ATTEST:


Executive Director