

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) Application No. NUSF-32.13
on its own motion, seeking to)
conduct an inquiry into the)
failure of certain telecommuni-) ORDER SUSTAINING SHOW CAUSE
cations companies to comply with) AND IMPOSING CIVIL PENALTIES
Commission Rules or Orders and)
to impose administrative fines.)
) Entered: July 7, 2014

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, 2013:

NetOne International

The following companies failed to file the audit report that was due on December 31, 2013 altogether:

BCN Telecom
Ernest Communications

A Show Cause Hearing was held on May 20, 2014 where the above-named companies had the opportunity to show cause why they failed to 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.

An appearance was entered by Shana Knutson, general counsel for the Commission. No appearance was entered for above-named companies subject to the Show Cause Order.

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 that notice of the Show Cause hearing was sent via certified mail. One company, Ernest Communications, refused service. According to Ms. Casados, several attempts were made to notify BCN Telecommunications, Ernest Communications and NetOne International of the audit requirements. There are facts indicating BCN Telecommunications knew of its audit requirement as it filed a request for an audit waiver which was denied by the Commission. Further communications were made by the Department to BCN Telecommunications but the audit report has not yet been filed.

Similarly, the Department made several attempts to contact Ernest Communications. Although the Department is aware of a recent transaction between Ernest Communications and another entity, the Ernest Communications' Certificate of Public Convenience and Necessity is still active. No request to cancel the certificate has been filed. In addition, it has been the Commission's position that entities undergoing corporate restructuring and mergers remain responsible for keeping records sufficient to meet the Commission's audit report requirements.

In consideration of the information presented by the Department relative to the companies named in the Show Cause Order, the Commission finds the following entities should be required to file their remittance audits with the Commission no later than September 16, 2014.

BCN Telecom
Ernest Communications

In light of the failure of these companies to file their remittance audits pursuant to Commission rules and orders, respond to repeated communications by the Department, and in light of their failure appear at the Show Cause Hearing, the Commission finds BCN Telecom and Ernest Communications shall each be administratively fined thirty-three hundred dollars (\$3,300.00)

With respect to NetOne International, this entity filed its audit report after being notified by Commission staff that the audit report was due. However, the extension request was not filed until February 19, 2014, well after the December 31, 2013 deadline. The Commission finds in light of the attempt by NetOne International to work with the staff and to come into compliance, the Commission will reduce the administrative penalty to one hundred dollars (\$100.00).

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 BCN Telecommunications, Ernest Communications and NetOne International.

IT IS FURTHER ORDERED that BCN Telecommunications and Ernest Communications be and they are hereby required to file their remittance audits with the Commission no later than September 16, 2014.

IT IS FURTHER ORDERED that BCN Telecommunications and Ernest Communications 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 NetOne International be, and it is hereby, ordered to submit payment in the amount of \$100.00 as an administrative penalty for failure to timely comply with the Commission's remittance audit requirements.

IT IS FURTHER ORDERED that BCN Telecommunications, Ernest Communications and NetOne International 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 7th day of July, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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IT IS FURTHER ORDERED that BCN Telecommunications, Ernest Communications and NetOne International 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 7th day of July, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram
Gerald L. Vap

Frank E. Landis
Chairman

ATTEST:

Steve Meredith
Executive Director

//s//Rod Johnson
//s//Frank E. Landis