

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission on its)	Application No. NUSF-32
own motion, seeking to conduct an)	
inquiry into the failure of various)	FURTHER ORDER TO SHOW CAUSE
companies to comply with Commission)	AGAINST TOUCH AMERICA
Orders and, at its own discretion,)	
impose administrative fines against the)	Entered: April 8, 2003
named defendants.		

BY THE COMMISSION:

On November 19, 2002, the Nebraska Public Service Commission initiated an inquiry to investigate the failure of various companies to comply with Commission Orders and, at its own discretion, impose administrative fines against the named defendants. Touch America Inc. was among the named defendants.

As part of its regulatory authority pursuant to the Nebraska Telecommunications Universal Service Fund Act, the Commission, on March 28, 2000, entered an order in Docket NUSF-1, Progression Order #7, requiring all companies whose revenues, subject to assessment of the NUSF surcharge, are greater than \$1,000,000 in a NUSF fiscal year, shall have all information used for the determination of intrastate retail telecommunications services revenue subject to the NUSF surcharge, audited on an annual basis. This audit shall be performed by an independent third party, with audit results for a fiscal year being due before the end of the next fiscal year

Based upon the failure of several companies to file their audit results by the Order's deadlines, Jeff Pursley, the Director of the Nebraska Universal Service Fund (NUSF), issued a memorandum on June 3, 2002, to those companies whose revenues, subject to assessment of the NUSF surcharge, were greater than \$1,000,000 in the Fiscal Years 1999/2000 and 2000/2001, as reported by each companies' submitted Remittance Worksheets, requiring that this information be submitted to the Commission on or prior to August 30, 2002. In the same memorandum of June 3, 2002, companies were apprised of the possibility that an administrative fine, pursuant to Nebraska Revised Statute 75-156, could be levied for failure to comply.

Prior to August 30, 2002, several of the companies delinquent in the submission of the Commission's requested audit information, contacted the NUSF requesting an extension of time due to the fact that a third party auditing company was required to be engaged. Upon the receipt of several of these requests, and in consideration of the current auditing industry's failures and subsequent closings, the extension of time was granted to October 30, 2002.

On December 17, 2002, the Commission held a hearing, regarding the failure of Touch America and other named defendants to file the

required audit(s). At this hearing, Touch America complied with the Commission's order to appear and admitted that it had not yet filed the required audit with the Commission. Specifically, Mr. Joseph Michaud, appearing on behalf of Touch America, testified that it was Touch America's intention of having the required audit filed within thirty days of the date of the hearing. The NUSF Department subsequently contacted Touch America to inquire about its progress; however, no satisfactory response or audit has been filed as of the date of this order.

At this time, the Commission has again failed to receive the requested information and believes that Touch America should be required to appear before the Commission for a hearing on May 13, 2003 in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska at 1:00 p.m. to explain why the Commission should not issue continuing administrative penalties upon it and in the alternative why the Commission should not revoke the Certificate of Public Convenience and Necessity held by Touch America, Inc. to operate as an interexchange telecommunications carrier within the State of Nebraska for the violation of a Commission Order entered in NUSF-1, Progression Order No. 7 and section 003.05 in title 291, chapter 10 of the Neb. Admin. Code.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Touch America, Inc. is hereby ordered to appear before the Commission on May 13, 2003 at 1:00 p.m. in the Commission Hearing Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska, to show cause why administrative penalties of up to \$10,000 per day should not be levied against it, and in the alternative, why its Certificate of Public Convenience and Necessity should not be revoked for failure to comply with NUSF-1, Progression Order #7 and section 003.05 in title 291, chapter 10, of the Neb. Admin. Code.

MADE AND ENTERED at Lincoln, Nebraska, this 8th day of April, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

