

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission on)	Application No. NUSF-32
its own motion, seeking to conduct)	
an inquiry into the failure of)	ORDER DISMISSING FURTHER SHOW
various companies to comply with)	CAUSE HEARING AND ORDER
Commission Orders and, at its own)	ASSESSING CIVIL PENALTIES
discretion, impose administrative)	
finances against the named defendants.)	Entered: April 22, 2003

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 section 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 was filed as of April 8, 2003.

On April 8, 2003, the Commission entered a Further Order to Show Cause seeking revocation of the Certificate of Public Convenience held by Touch America and in the alternative further civil penalties. On April 9, 2003, the Commission received the requested audit information.

The Commission believes that Touch America should be required to remit a civil penalty for the continued violation of the audit requirement. Touch America filed its audit one hundred and sixty-one days past the Commission imposed deadline. In consideration of the continued violation, the Commission finds it appropriate to assess Touch America a penalty of \$9,300.00 for the violation of a Commission Order entered in NUSF-1, Progression Order No. 7 and section 003.05 of Title 291, Chapter 10 of the Neb. Admin. Code. In considering the amount of the penalty the Commission weighed the gravity of the violation and the number of days in which the audit was late with the cooperation of Touch America and all mitigating factors raised by Touch America in the December hearing. The penalty assessed should be remitted within thirty days from the date appearing on this Order.

The Commission further finds that the Further Order to Show Cause, which sought the revocation of the Certificate of Public Convenience and Necessity held by Touch America, should be dismissed. The hearing previously set for May 13, 2003 should be canceled.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Touch America, Inc. is hereby assessed a civil penalty of \$9,300.00 for its failure to comply with NUSF-1, Progression Order #7 and section 003.05 in Title 291, Chapter 10, of the Neb. Admin. Code.

IT IS FURTHER ORDERED that said penalty be made payable to the Nebraska Public Service Commission and remitted within thirty days from the date appearing on this Order.

IT IS FURTHER ORDERED that the further order to show cause to revoke Touch America's certificate of public convenience and necessity be and it is hereby dismissed and the hearing set for May 13, 2003 is hereby canceled.

MADE AND ENTERED at Lincoln, Nebraska, this 22nd day of April 2003.

COMMISSIONERS CONCURRING:

NEBRASKA PUBLIC SERVICE COMMISSION

Chairman

ATTEST:

Deputy Director