

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Jeffrey L.) Application No. 911-020/DC-
Pursley, Director of the) 73
Nebraska Telephone)
Infrastructure and Public Safety)
Department of the Nebraska)
Public Service Commission)
)
Complainant,)
)
v.) COMPLAINT DISMISSED IN PART
) AND SUSTAINED IN PART
Budget Phone, Inc., d/b/a Budget)
PrePay; BullsEye Telecom, Inc.;)
Excel; Ionex Communications)
North, Inc., a/k/a Birch)
Telecom, Inc.; MCImetro Access)
Transmission Services, LLC; NOS)
Communications, Inc.; Orbit.com;)
and Vartec, Respondent(s).)
)
Defendants.) Entered: January 9, 2007

BY THE COMMISSION:

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

By Petition filed on June 27, 2006, the Nebraska Telecommunications Infrastructure and Public Safety Department (Department) of the Nebraska Public Service Commission (Commission) filed a complaint seeking fines against those carriers who failed to file landline 911 reports pursuant to Neb. Rev. Stat. §86-437 (2004 Cum. Supp.). All carriers who had not timely filed landline 911 reports with the Commission were named as defendants.

Notice of the docket appeared in The Daily Record, Omaha, Nebraska, on June 27, 2006. A hearing was held on August 15, 2006, in the Commission Hearing Room, Lincoln, Nebraska, for any defendants who were not previously dismissed from the docket.

All carriers were notified via first class mail of their obligation to file a landline 911 report on or before April 30, 2006. A copy of this letter was entered into the record as Exhibit 4. The Commission also took administrative notice of all previous orders entered in this docket dismissing certain defendants.

The following defendants remain in the docket: Budget Phone, Inc., dba Budget PrePay, BullsEye Telecom, Inc., Excel Communications, Inc., MCImetro Access Transmission Services and Vartec Telecom.

Vartec Telecom and Excel Communications, Inc. have provided notices of bankruptcy and a subsequent letter showing that they no longer have operations in Nebraska and that their assets were purchased in bankruptcy by a separate entity. Consequently, the complaint should be dismissed as to these defendants. These notices and letters have been entered into the record as Exhibits 5,6, and 7 respectively.

The hearing with respect to MCImetro Access Transmission Services (MCImetro) was continued to a later date for oral argument pursuant to a settlement agreement in which MCImetro raised legal arguments regarding its obligation to report certain information.

The remaining defendants are telecommunications companies generally regulated by the Commission, pursuant to Neb. Rev. Stat. §§ 75-101, et seq. (2004 Cum. Supp.) and §§ 86-101 et seq. (2004 Cum. Supp.). Defendants are also governed by Title 291 NAC Ch. 5 of the Commission's Rules and Regulations.

As part of its regulatory authority and pursuant to § 86-437, the Commission, through its Telecommunications Infrastructure and Public Safety Department, requires telecommunications companies to file a landline 911 report with the Commission in a form prescribed by the Commission on or before April 30th of each year.

The defendants originally named in the petition failed to comply with the mandates of Neb. Rev. Stat. § 86-437. Therefore, this Commission, pursuant to its legislative authority, may administratively impose fines on all such companies after notice and public hearing.

The Commission subsequently determined that several defendants had adequately complied with the provisions of Neb. Rev. Stat. § 86-437 and had satisfactorily submitted a landline 911 report. Therefore such parties were dismissed from the complaint.

All defendants who contacted the Commission were given the option of negotiating a settlement by submitting the required report and signing a stipulation with the Department, wherein

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. 911-020/DC-73

PAGE 3

each defendant admitted to filing their annual report late and agreed to pay an administrative fine to dismiss the departmental complaint against them.

The remaining defendants either did not contact the Commission or did not agree to the terms of the stipulation. Furthermore, all defendants were notified of the hearing and were entitled to appear. Nonetheless, no carriers made an appearance at the public hearing to show cause as to why fines should not be levied against them.

Accordingly, consistent with the established fining policy of the Department, fines should be levied against the following defendants in the amount of **\$3,300.00**:

Budget Phone, Inc., dba Budget PrePay
BullsEye Telecom

With respect to MCImetro, an oral argument was held on October 4, 2006. Neb. Rev. Stat. § 86-437 states in relevant part,

On or before April 30 of each year, each service supplier shall report for the preceding calendar year to the Public Service Commission for each of its exchanges (a) whether 911 service or E-911 service is provided in that exchange, (b) the level of the service surcharge, (c) the location of the public safety answering point, (d) whether the governing body belongs to an interlocal agreement or other agreement with another governing body and, if so, the name of the other governing body, and (e) the amount of revenue collected by the service surcharge.

MCImetro contended that based upon the language of Neb. Rev. Stat. § 86-437, as a non-facilities based provider it had no exchanges and the exchanges over which it provided service were Qwest exchanges. The Commission finds that all CLECs, regardless of whether they have facilities within Nebraska, must provide the information required by § 86-437 and must do so in the manner required by the Commission.

Therefore, the Commission finds that MCImetro was in violation of § 86-437 by failing to file all of the required information by the April 30th deadline. Commission staff recommended that the maximum fine of \$3,300 be assessed against MCImetro. MCImetro argued that its reading of the statute was reasonable and that its fine should be reduced. The Commission

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. 911-020/DC-73

PAGE 4

finds that a fine in the amount of **\$500.00** be assessed against MCImetro for its failure to timely file a complete report pursuant to § 86-437.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Vartec Telecom and Excel Communications be, and are hereby, dismissed from the departmental complaint. Fines will be levied against Budget Phone, Inc., dba Budget PrePay and BullsEye Telecom consistent with Commission policy in the amount of \$3,300.

IT IS FURTHER ORDERED that a fine be levied against MCImetro Access Transmission Services in the amount of \$500.

MADE AND ENTERED at Lincoln, Nebraska, this 9th day of January, 2007.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

[Signature]
Anne C. Boyle
Tim Schram

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

Chair

Rod Johnson

ATTEST:

And S Pollak

Executive Director