

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Cullen)	Application No. ADC-15
Robbins, Director of the)	
Communications Department of)	
the Nebraska Public Service)	
Commission,)	
)	
Complainant,)	ORDER SUSTAINING COMPLAINT
v.)	
)	
Remington Research Group)	
)	
and)	
)	
Nebraska Republican Party,)	
)	
Respondents.)	Entered: December 8, 2020

BY THE COMMISSION:

On October 6, 2020, a Complaint was filed by the Communications Department ("Department") of the Nebraska Public Service Commission ("Commission"), alleging that Respondents Remington Research Group and the Nebraska Republican Party violated Nebraska statutes and Commission rules and regulations regarding automatic dialing-announcing devices ("autodialers"). The Complaint sought administrative remedies, specifically, the imposition of administrative fines against Respondents, and the entry of an order to cease and desist pursuant to Neb. Rev. Stat. § 86-253.

On October 6, 2020, and later ratified on October 13, 2020, the Commission entered an order requiring Respondents to cease and desist transmitting any autodialer messages which had not received approval from the Commission in advance of their transmission. Also in this order, and pursuant to Neb. Rev. Stat. § 86-253, the Commission set a hearing on the complaint to be held on October 20, 2020.

E V I D E N C E

A hearing on this matter was held on October 20, 2020, with persons participating both in the Commission Hearing Room and via Zoom webconference. Andy Pollock appeared on behalf of Respondents. Edward Greim also appeared pro hac vice on behalf of

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. ADC-15

Page 2

Respondents. Sallie Dietrich appeared on behalf of the Communications Department. Exhibits numbered 1 - 23 were offered and accepted. Exhibit No. 24 was offered as a late-filed exhibit by Respondents but was not admitted.

The Department presented the oral testimony of Cullen Robbins, the Director of the Communications Department. Mr. Robbins testified that the Department filed the Complaint in this matter under his direction.¹ Mr. Robbins further testified that before an autodialer may transmit political messages in Nebraska, it must hold a valid registration on file with the Commission.² Mr. Robbins also outlined Commission procedures for registered autodialers who wish to transmit a message in Nebraska.³ Autodialers who do not comply with these procedures are subject to a fining policy, which was entered into the record as Exhibit 5.⁴ Mr. Robbins noted that this policy is publicly available on the Commission website.⁵

Mr. Robbins further testified that on September 30, 2020, the Communications Department received an informal complaint regarding an autodialer message.⁶ Mr. Robbins testified that Department staff attempted to contact the Nebraska Republican Party regarding this call but were unsuccessful.⁷

On October 1, 2020, the Department received an application for an autodialer registration from Remington Research Group, which was submitted by Titus Bond.⁸ Mr. Bond also submitted an audio recording of the autodialer message which had been previously transmitted in Nebraska by Remington Research Group.⁹ Mr. Robbins testified that he had listened to the recording of the message, and that it identified the Nebraska Republican Party as the party who paid for the transmission of that message.¹⁰ Mr. Robbins testified that he understood the message had been transmitted to approximately 2,000 Nebraskans in the First Legislative District of Nebraska on September 30th, 2020.¹¹

¹ Transcript at 17.

² *Id.* at 14-15.

³ *Id.*

⁴ *Id.* at 16.

⁵ *Id.* at 17-18.

⁶ *Id.* at 18-19.

⁷ *Id.* at 19.

⁸ *Id.* at 19; Exhibit 7.

⁹ Transcript at 25.

¹⁰ *Id.* at 25-26.

¹¹ *Id.* at 26-27.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. ADC-15

Page 3

Mr. Robbins testified that he believed both Respondents had acted in violation of Commission autodialer requirements.¹² Mr. Robbins further recommended that the Commission levy administrative fines and fees against Respondents, jointly and severally, in the total amount of \$650.¹³

Following Mr. Robbins' testimony, no further witnesses were called. Counsel for Respondents offered a statement indicating that Respondents did not object to the Department's recommendation of fines in the amount of \$650.¹⁴ No further evidence was offered, and the hearing was adjourned.

F I N D I N G S

Commission enforcement of automatic dialing-announcing device messages is governed by the Automatic Dialing-Announcing Devices Act, Neb. Rev. Stat. §§ 86-236 - 257. A cease and desist order was entered in this docket under Neb. Rev. Stat § 86-253; therefore, a hearing on the matter was required to be held within twenty days of the order's entry.

In considering the allegations contained in the Complaint in this matter, the Commission notes that while some matters can be disposed of administratively, others are required by statute to be given public hearing.¹⁵ Moreover, a concern regarding a political message transmitted by an autodialer, in a hotly contested election cycle, is one which merits the transparency afforded by public hearing. The Commission further notes that autodialer messages, generally, are unpopular with the public.¹⁶ The Commission therefore closely scrutinizes potential violations of autodialer statutes and regulations.

Upon review of the evidence presented in this matter, the Commission finds that Respondents Remington Research Group and the Nebraska Republican Party have violated Nebraska statutes and

¹² *Id.* at 27-28.

¹³ *Id.* at 28.

¹⁴ *Id.* at 78-79.

¹⁵ See 291 Neb. Admin. Code § 1-002.10A (allowing disposition by settlement unless otherwise precluded by law); *but see* Neb. Rev. Stat. § 86-253 (requiring a hearing to be held if a cease and desist order is entered on an autodialer complaint).

¹⁶ See, e.g., *Stop Unwanted Robocalls and Texts*, Federal Communications Commission, <https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts> (last visited Nov. 18, 2020) ("Unwanted calls - including illegal and spoofed robocalls - are the FCC's top consumer complaint and our top consumer protection priority.").

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. ADC-15

Page 4

Commission regulations by transmitting autodialer messages to Nebraska residents without holding a current permit or registration. The Commission finds that Respondents were capable of following Commission procedures, but chose not to. The required procedures are not onerous, and information regarding compliance is publicly available and easily accessible. Therefore, fines and fees are appropriate in this case.

The Commission finds that the Communication Department's recommended fines and fees are appropriate, in accordance with Commission policy and precedent, and should be adopted. Specifically, the Commission finds that a fine of \$550 should be levied against the Respondents, as well as a processing fee of \$100, for a total of \$650. Respondents shall be jointly and severally liable for these fines and fees. If these fines are not paid within thirty (30) days of the date of this order, the Commission will proceed with further disciplinary action.




O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that fines and fees in the amount of \$650 shall be levied, jointly and severally, against Remington Research Group and the Nebraska Republican Party, payable to the Commission within thirty (30) days of the date of this order.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 8th day of December, 2020.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Chair

ATTEST:


Executive Director