

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No.C4166/DC-76
Public Service Commission)
regarding the 2008 Annual Report)
Filings.) COMPLAINT SUSTAINED IN PART
) DISMISSED IN PART
)
)
Entered: August 25, 2009

BY THE COMMISSION:

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

By original complaint, dated May 5, 2009, the Communications Department (Department) of the Nebraska Public Service Commission (Commission) initiated this docket requesting the Commission to revoke the operating authority of various defendants for failure to file annual reports pursuant to Neb. Rev. Stat. § 86-159 (Reissue of 2008). All companies who had not filed annual reports with the Commission or who had filed incomplete annual reports were named as defendants in this docket. A copy of the Complaint and the Order to Show Cause was mailed to each defendant via certified United States mail.

A hearing was held on August 4, 2009, in the Commission Hearing Room, Lincoln, Nebraska, for any defendants who were not previously dismissed from the docket.

All Interexchange Carriers ("IXCs") and Competitive Local Exchange Carriers ("CLECs") were notified via certified United States mail on or around January 31, 2009, of their obligation to file an annual report on or before April 30, 2009. All IXCs and CLECs were notified a second time via certified United States mail on March 31, 2009. Copies of all of these letters were entered into the record as Exhibits 3 and 4 respectively. The Commission also took administrative notice of all previous orders entered in this docket dismissing certain defendants.

The respondents are IXC and CLEC telecommunications companies generally regulated by the Commission, pursuant to Neb. Rev. Stat. § 75-101, et. seq. (2008 Cum. Supp.) and §§ 86-101 et. seq. (Reissue of 2008). Defendants are also governed by Title 291, NAC Chapter 5 of the Commission's Rules and Regulations.

As part of its regulatory authority and pursuant to § 86-159, the Commission, through its Communications Department, requires telecommunications companies which file an annual

report with a federal agency to file a copy of the same report with the Commission on or before the date on which said report is filed with the federal agency. Every such company not required to file such a report with a federal agency is required to file an annual report with the Commission in a form prescribed by the Commission on or before April 30th of each year.

The following respondents remain in the docket:

Bandwidth.com, Inc.
Business Productivity Solutions
IBFA Acquisition Company, LLC
GTC Telecom
NexUSTel, LLC
McLeodUSA Telecommunications Services, Inc.
United American Technology, Inc.
HCI Investment Company d/b/a Native Sky
VCI Company d/b/a Vilaire Communications, Inc.

The respondents are telecommunications companies generally regulated by the Commission, pursuant to Neb. Rev. Stat. §§ 75-101, et seq. (Reissue of 2008) and §§ 86-101 et seq. (Reissue of 2008). Respondents are also governed by Title 291, NAC Ch. 5 of the Commission's Rules and Regulations.

The respondents originally named in the petition failed to comply with the mandates of Neb. Rev. Stat. § 86-159. Therefore, this Commission, pursuant to its legislative authority, may administratively impose fines on all such companies after notice and public hearing and/or revoke the certificates of public convenience and necessity issued to the respondents.

The Commission subsequently determined that several respondents had adequately complied with the provisions of Neb. Rev. Stat. § 86-159 and had satisfactorily submitted an annual report for the year 2008. Therefore such parties were dismissed from the complaint.

All respondents who contacted the Commission were given the option of negotiating a settlement by submitting an annual report and signing a stipulation with the Department, wherein each defendant admitted to filing their annual report late and agreed to pay an administrative fine to dismiss the departmental complaint against them.

The companies listed below contacted the Commission and have subsequently signed a stipulation with the Department wherein each defendant admits to filing its report late and has paid an administrative fine to dismiss the departmental complaint:

Bandwidth.com, Inc.

IBFA Acquisition Company, LLC

McLeodUSA Telecommunications Services, Inc.

United American Technology, Inc.

The signed stipulation is satisfactory and therefore, the above-listed respondents should be dismissed from the complaint. The companies listed in the preceding paragraph that stipulated with the Department should be aware that this Commission will not tolerate similar behavior in 2010 regarding the filing of the 2009 report. If reports are not postmarked on or before April 30, 2010, the option of resolving the complaint through a stipulation will be closely scrutinized. All companies that have agreed to such a stipulation will be considered a willful violator and be subject to the maximum penalty allowed.

The remaining respondents either did not contact the Commission or did not agree to the terms of the stipulation. Furthermore, all respondents were notified of the hearing and were entitled to appear. Nonetheless no carriers made an appearance at the public hearings to show cause as to why administrative fines should not be assessed and their certificates of authority should not be revoked.

Two respondents, NexUSTel, LLC and VCI Company d/b/a Vilaire Communications, Inc., sought and received approval to voluntarily withdraw their certificates of authority in Nebraska on June 23, 2009, and January 6, 2009, respectively, therefore, the companies retain no certificates of authority to revoke and are not doing business in Nebraska. Accordingly, fines should be levied against the following respondents:

Business Productivity Solutions

GTC Telecom

NexUSTel, LLC

HCI Investment Company d/b/a Native Sky

VCI Company d/b/a Vilaire Communications, Inc.

Further, the Certificates of Public Convenience and Necessity issued to the following respondents should be revoked:

Business Productivity Solutions
GTC Telecom
HCI Investment Company d/b/a Native Sky

O R D E R

IT IS THEREFORE ORDERED that fines be levied consistent with the Commission approved fining policy calculated as of the date of the hearing against the respondents: Business Productivity Solutions, GTC Telecom, NexUSTel, LLC, HCI Investment Company d/b/a Native Sky, and VCI Company d/b/a Vilaire Communications, Inc.

IT IS FURTHER ORDERED that the Certificates of Public Convenience and Necessity issued to the respondents: Business Productivity Solutions, GTC Telecom, and HCI Investment Company d/b/a Native Sky be, and are hereby, revoked.

IT IS FURTHER ORDERED that the respondents revoked herein shall cease and desist providing service in the State of Nebraska within 60 days from the date of this order. Furthermore, said carriers shall give at least 30 days notice of discontinuance of service to their customers and reimburse said customers from any charges associated with obtaining service from a different carrier.

MADE AND ENTERED at Lincoln, Nebraska, this 25th day of August, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. C-4166/DC-76

Page 4

Further, the Certificates of Public Convenience and Necessity issued to the following respondents should be revoked:

Business Productivity Solutions
GTC Telecom
HCI Investment Company d/b/a Native Sky

O R D E R

IT IS THEREFORE ORDERED that fines be levied consistent with the Commission approved fining policy calculated as of the date of the hearing against the respondents: Business Productivity Solutions, GTC Telecom, NexUSTel, LLC, HCI Investment Company d/b/a Native Sky, and VCI Company d/b/a Vilaine Communications, Inc.

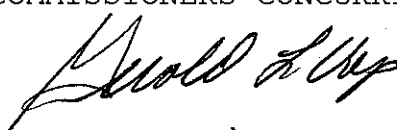

IT IS FURTHER ORDERED that the Certificates of Public Convenience and Necessity issued to the respondents: Business Productivity Solutions, GTC Telecom, and HCI Investment Company d/b/a Native Sky be, and are hereby, revoked.

IT IS FURTHER ORDERED that the respondents revoked herein shall cease and desist providing service in the State of Nebraska within 60 days from the date of this order. Furthermore, said carriers shall give at least 30 days notice of discontinuance of service to their customers and reimburse said customers from any charges associated with obtaining service from a different carrier.

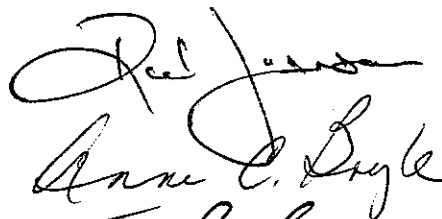


MADE AND ENTERED at Lincoln, Nebraska, this 25th day of August, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

 
Chair

ATTEST:


Anne C. Doyle

Executive Director


//s//Frank E. Landis