

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No.C-4467/DC-81  
Public Service Commission )  
regarding the 2011 Annual Report )  
Filings. ) COMPLAINT DISMISSED IN  
 ) PART, SUSTAINED IN PART  
 )  
 ) Entered: August 28, 2012

BY THE COMMISSION:

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

By original complaints, dated May 16, 2012, the Communications Department (Department) of the Nebraska Public Service Commission (Commission) initiated this docket requesting the Commission to revoke the operating authority of various respondents 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 respondents in this docket. A copy of the Complaint and the Order to Show Cause was mailed to each respondent via certified United States mail.

A hearing was held on August 7, 2012, in the Commission Hearing Room, Lincoln, Nebraska, for any respondents who were not previously dismissed from the docket.

All Interexchange Carriers ("IXCs") and Competitive Local Exchange Carriers ("CLECs") were notified via electronic mail or United States mail on or around January 31, 2012, of their obligation to file an annual report on or before April 30, 2012. All CLECs and IXCs were also noticed via certified United States mail on or around March 1, 2012, of their obligation to file an annual report on or before April 30, 2012. All IXCs and CLECs were notified again via electronic mail or United States mail a second time on or around April 1, 2012. Copies of the letters were entered into the record as Exhibit No. 3. The Commission also took administrative notice of all previous orders entered in this docket dismissing certain defendants.

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:

American Fiber Network, Inc.  
Dark Fiber Solutions, Inc.  
Midwestern Telecommunications, Inc.  
Galaxy Cable, Inc.  
NECC Telecom, Inc.  
Telmex USA, LLC  
United American Technology, Inc.  
Zoom-i-net Communications, Inc.  
Net Talk.com, Inc.  
Net One International, Inc.

The respondents are telecommunications companies generally regulated by the Commission, pursuant to Neb. Rev. Stat. §§ 75-101, et seq. (Reissue of 2009) 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 some respondents had adequately complied with the provisions of Neb. Rev. Stat. § 86-159 and had satisfactorily submitted an annual report for the year 2011. 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 respondent admitted to filing their annual report late and agreed to pay an administrative fine to dismiss the departmental complaint against them.

Regarding Dark Fiber Solutions, Inc., Galaxy Cable, Inc., and Zoom-i-net Communications, Inc., all three carriers have previously withdrawn their authority voluntarily and had no business activities in Nebraska. The Department recommends dismissal of Dark Fiber Solutions, Inc., Galaxy Cable, Inc., and Zoom-i-net Communications, Inc. from the above-captioned complaint.

Regarding Net One International, Inc. ("Net One"), the Company filed all the required elements of the report except for the financial records in a timely fashion. On August 3, 2012, the Commission received a letter from Net One explaining that due to a significant computer malfunction, the company had lost all of its computer documents and files including its financial records. The company is in the process of reconstructing the financial documents and committed to providing them to the Commission as soon as they were available for the 2011 year. The Department recommends Net One be given until October 31, 2012, to file its financial documents or to update the Commission on the status of the recovery of the destroyed files and that Net One be dismissed from the complaint. In the event the company does not file its financial records as promised, the Department will seek further administrative action at that point against Net One.

Regarding NECC Telecom, Inc. ("NECC"), the company contacted the Commission after the hearing and explained it had been in a transitional period with the firms contracted to perform regulatory filings on behalf of the company and were unaware until recently that its annual report for 2011 had not been filed. NECC filed its annual report for 2011, signed a stipulated agreement with the Department and paid an administrative fine. The Department recommends NECC be dismissed from the complaint.

Regarding Net Talk.com, Inc. ("Net Talk"), the company contacted the Commission prior to the hearing, the company had filed an incomplete report and had only one document and the filing fee outstanding. Net Talk filed the remaining document to complete its annual report for 2011, signed a stipulated agreement with the Department and paid an administrative fine. The Department recommends Net Talk be dismissed from the complaint.

We therefore find that the following respondents should be dismissed from the complaint:

Dark Fiber Solutions, Inc.  
Galaxy Cable, Inc.  
NECC Telecom, Inc.  
Zoom-i-net Communications, Inc.  
Net One International, Inc.  
Net Talk.com, Inc.

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.

Accordingly, fines should be levied and the Certificates of Public Convenience and Necessity should be revoked for the following respondents:

American Fiber Network, Inc.  
Midwestern Telecommunications, Inc.  
Telmex USA, LLC  
United American Technology, Inc.

O R D E R

IT IS THEREFORE ORDERED that respondents Dark Fiber Solutions, Inc.; Galaxy Cable, Inc.; NECC Telecom, Inc.; Zoom-inet Communications, Inc.; Net One International, Inc.; and Net Talk.com, Inc., be and are hereby, dismissed.

IT IS FURTHER ORDERED that fines be levied consistent with the Commission approved fining policy calculated as of the date of the hearing against respondents American Fiber Network, Inc.; Midwestern Telecommunications, Inc.; Telmex USA, LLC; and United American Technology, Inc.

IT IS FURTHER ORDERED that the Certificates of Public Convenience and Necessity issued to the respondents American Fiber Network, Inc.; Midwestern Telecommunications, Inc.; Telmex USA, LLC; and United American Technology, Inc., 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 28<sup>th</sup> day of August, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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MADE AND ENTERED at Lincoln, Nebraska, this 28<sup>th</sup> day of August, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Tim Schram*

*Anne Boyle*

*Gerald Long*

//s// Rod Johnson

Chairman

*Rod Johnson*

ATTEST:

Executive Director

*Michael J. H.*