

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the Application) Application No. NUSF-20
of Telebeep, Inc., Norfolk,)
Nebraska, seeking issuance by the)
Commission of an order waiving) GRANTED
the assessment of the Nebraska)
Universal Service Fund surcharge)
beginning July 1, 1999, through) Entered: February 29, 2000
October 31, 1999.

Appearances:

For the Applicant:
Andrew S. Pollock
Brooks, Pansing Brooks, P.C.
1248 "O" Street, Suite 984
Lincoln, Nebraska 68508-1424

For the Commission:
Chris A. Post
300 The Atrium
1200 "N" Street
Lincoln, Nebraska 68508

BY THE COMMISSION:

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

By its Application filed November 11, 1999, Telebeep, Inc. ("Telebeep") seeks issuance by the Nebraska Public Service Commission ("Commission") of an order waiving the assessment of the Nebraska Universal Service Fund ("NUSF" or "Fund") surcharge for the period from July 1, 1999, through October 31, 1999. Notice of the application appeared in *The Daily Record* on November 17, 1999. No party protested the application or intervened in this proceeding. A hearing on the application was held February 1, 2000, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

In support of its Application, the Applicant produced one witness, Tom Schommer, President of Telebeep, who testified as follows:

Mr. Schommer testified that Telebeep is a small paging company with its principal place of business in Norfolk. Telebeep is seeking a waiver from any obligation to collect and remit the NUSF surcharge it may have had from July 1, 1999, through October 31, 1999.

Mr. Schommer further testified to the following series of events. In late October 1999, Telebeep received a Memorandum from Mr. Pursley, stating that NUSF records showed that Telebeep had not made remittances to the Fund. Mr. Schommer did not recall

receiving any notice of an obligation to collect and remit the NUSF surcharge prior to September 1999. Commission Exhibit No. 7, however, showed that Telebeep had received a mailing from the Commission on March 25, 1999. On approximately September 1999, prior to receiving the Memorandum notice, Mr. Schommer became aware of a potential obligation for Telebeep to contribute to the NUSF. Thereupon, he contacted a law firm in Washington, D.C. that Telebeep calls upon periodically to address various issues and handle various matters relating to licensing and communications law, regulation and policy. Said legal counsel advised Mr. Schommer that, as with the Federal Universal Service Fund, Telebeep qualified for a "de minimis" exemption from the NUSF. Mr. Schommer relied upon that advice.

Mr. Schommer further testified that, upon receiving the October 1999 Memorandum, he immediately spoke with Mr. Post, who informed him that such NUSF "de minimis" exemption would not apply to Telebeep. According to Mr. Post, Telebeep had an obligation under Nebraska law to collect the NUSF surcharge from its customers and to remit it to the fund. Mr. Schommer again contacted the Washington, D.C. legal counsel, which, after further analysis, advised Mr. Schommer to begin assessing and remitting the surcharge.

Mr. Schommer further testified that within days after his conversation with Mr. Post, effective November 1, 1999, Telebeep began collecting a surcharge from each of its customers. Acting again upon advice of legal counsel, this time local, Telebeep put all collections into an escrow account. Mr. Schommer testified that this was done due to a pending Petition for Declaratory Ruling filed by ATS Mobile Telephone Company, Inc. in NUSF-1. That Petition seeks a Commission ruling that paging services are exempt from the NUSF surcharge. Telebeep does not seek for the Commission to consider or rule upon that issue in the present proceeding.

Mr. Schommer said it would be infeasible and virtually impossible to go back and assess and collect the surcharge for the July-October 1999 period at this point in time. He explained that there was no way to determine with accuracy those persons and companies which were Telebeep customers during the time period in question. Further, he testified that Telebeep would have to manually figure each charge it would assess. Given Telebeep's small size and staff, it would be an overwhelming burden to do so.

No other parties introduced testimony or evidence at the hearing.

The Commission finds that due to the specific circumstances and facts involved in the present proceeding that it should grant Telebeep's request for a waiver of its obligation to collect and remit the NUSF surcharge for the period beginning July 1, 1999, and ending October 31, 1999.

The evidence reveals that Mr. Schommer did not understand Telebeep's obligation to assess a surcharge until late October 1999. Mr. Schommer had earlier relied on advice of legal counsel that Telebeep did not have such an obligation because of a "de minimis" exemption. While the Commission does not believe that advice was accurate, the fact that Mr. Schommer actively sought that advice and reasonably relied upon it is evidence that he, and Telebeep, acted in good faith. Immediately upon ascertaining Telebeep's actual obligation, Telebeep began collecting the surcharge and has been doing so since.

The Commission further finds that there is nothing in the record to contradict Mr. Schommer's testimony concerning the impossibility of recreating Telebeep's customer base and assessing the surcharge on those customers during the time period at issue. Moreover, the Commission notes that there is no evidence of any direct or meaningful adverse effect upon any other telecommunications carrier. No party protested Telebeep's application or intervened in this proceeding. There is no evidence that any carrier lost customers to Telebeep during the time in question as a result of Telebeep not assessing the surcharge during that time.

For the above reasons, the Commission is of the opinion and finds that Application No. NUSF-20 should be granted.

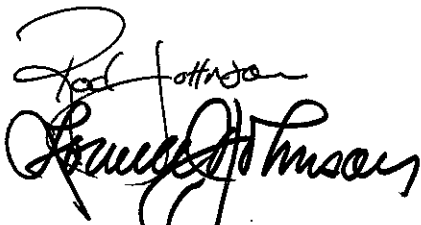
O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. NUSF-20 be and is hereby granted.

IT IS FURTHER ORDERED that Telebeep's obligation to collect and remit the NUSF surcharge on its customers from the period beginning July 1, 1999, and ending October 31, 1999, is waived.

MADE AND ENTERED at Lincoln, Nebraska, this 29th day of February 2000.

COMMISSIONERS CONCURRING:



//s//Frank L. Landis

NEBRASKA PUBLIC SERVICE COMMISSION:


Chairman

ATTEST:


Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

