

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the	)	Application No. NUSF-23/DC-36
Director of the Nebraska	)	
Universal Service Fund	)	
Department seeking an order	)	
to show cause against	)	ORDER
Nebraska Radio and Telephone	)	
Systems, Inc., doing business	)	
as the Better Beeper Company.	)	Entered: September 19, 2001

BY THE COMMISSION:

This matter comes before the Nebraska Public Service Commission (Commission) upon a Complaint filed by the Director of the Nebraska Universal Service Fund (NUSF) Department of the Commission against Nebraska Radio and Telephone Systems, Inc. doing business as the Better Beeper Company (Better Beeper or Respondent) a Nebraska company for failure to bill, collect and remit the NUSF surcharge pursuant to Commission order in NUSF-1 entered March 21, 2000 and in NUSF-4 entered June 2, 1999 as affirmed.

The Departmental Complaint/Petition to Show Cause was filed on July 11, 2001 and served upon Better Beeper on July 18, 2001. The Complaint alleged that Better Beeper failed to bill and collect from its customers the 6.95 percent surcharge required by the Commission in NUSF-4 and pursuant to the Commission's jurisdiction to carry out the requirements of the Nebraska Universal Service Fund Act at Neb. Rev. Stat. section 86-1401 et seq. No answer to the complaint was filed. On August 27, 2001, the Respondent filed its accounts receivable containing the sales tax paid by Better Beeper pursuant to a Commission subpoena duces tecum issued on August 13, 2001.

On August 29, 2001, a hearing was held in the Commission Hearing Room, Lincoln, Nebraska. Better Beeper did not enter an appearance. The Nebraska Universal Service Fund Department called one witness, Jeff Pursley, Director of the NUSF who testified as follows:

Mr. Pursley testified that he was familiar with the books and records of the NUSF department. He testified that Better Beeper failed to remit any funds to the NUSF despite Commission order and two requests. The NUSF department had contacted Better Beeper by letter on two occasions requesting that Better Beeper bill, collect and remit the surcharge to the NUSF. Evidence of receipt of one letter was offered into the record. Better Beeper failed to respond to the letters sent by the Commission and the NUSF Department. Mr. Pursley further testified that from the documents subpoenaed, he was able estimate the amounts owed to the NUSF. These documents were also offered and received into the record. Finally, Mr. Pursley testified that Better Beeper failed to respond to the Department's complaint.

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

The Nebraska Universal Service Fund was created pursuant to Neb. Rev. Stat. section 86-1401 et seq. according to Legislative direction to the Commission to "establish a funding mechanism which supplements the federal universal service support mechanisms and ensures that all Nebraskans, without regard to their location have comparable accessibility to telecommunications services at affordable prices." Neb. Rev. Stat. section 86-1402 (Reissue 1999). Consistent with statutory law that "Notwithstanding the provisions of section 86-808, the [C]ommission . . . (b) shall, consistent with the Telecommunications Act of 1996, require every telecommunications company to contribute to any universal service mechanism established by the commission pursuant to state law, and (c) may administratively fine pursuant to section 75-156 any person who violates the Nebraska Telecommunications Universal Service Fund Act." Neb. Rev. Stat. section 86-1405 (Supp. 2001). On March 21, 2000, this Commission ordered that CMRS providers, including paging companies, operating in the State of Nebraska shall bill and collect and remit the surcharge for the Nebraska Universal Service Fund beginning May 1, 2000.

From the evidence produced at the hearing and upon consideration of the record before the Commission, the Commission is of the opinion and finds that Better Beeper has failed to bill, collect and remit the NUSF surcharge pursuant to Commission order. Based on the subpoenaed documentation of Better Beeper and upon the evidence provided by the NUSF Director, we find that Better Beeper owes back support to the NUSF in the amount of seventy four thousand three hundred forty-one dollars (\$74,341.00). From the documentation received by the Commission from Better Beeper, it is clear that Better Beeper knew about its obligations to the NUSF. Specifically, Better Beeper began booking amounts under the heading "Universal Service Fund-State" in its ledger report in late April of 2000; immediately after the Commission announced in its March 21, 2000 order that providers such as Better Beeper were required to remit the 6.95 percent surcharge amount to the NUSF. Even though certain amounts were booked for NUSF, these amounts were never collected from the end-user, expensed or carried over to the following months. Nor were these amounts remitted to the NUSF.

We therefore find by clear and convincing evidence that Better Beeper has failed to comply with a Telecommunications order entered by the Commission pursuant to Neb. Rev. Stat. § 75-156. Upon consideration of the gravity of the violation at issue in the present case, the Commission finds it appropriate to levy an administrative penalty upon the Respondent in the amount of ten thousand dollars (\$10,000) for continued violation of Commission orders and particularly, the Commission's March 21, 2000 order. The evidence demonstrated that the remittance obligation was known to Better Beeper yet willfully disregarded. As previously found, the Commission made demands on Better Beeper which were never answered. Likewise, Better Beeper began booking amounts for the state universal service fund but did not remit any of these amounts to the fund.

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Additionally, we note that there was no good faith mitigation on the part of Better Beeper as it failed to respond to Commission letters, and the Commission complaint. Better Beeper further failed to respond to a Commission subpoena in a timely fashion. In addition to the fine amount provided above, we find that Better Beeper should also pay the back support due to the NUSF.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission, that Better Beeper shall remit to the Nebraska Universal Service Fund seventy-four thousand three hundred forty-one dollars (\$74,341.00) for back support owed to the Nebraska Universal Service Fund.

IT IS FURTHER ORDERED that an administrative penalty of ten thousand dollars (\$10,000) shall be and it is hereby levied upon Better Beeper for violation of Commission orders. This administrative penalty shall be remitted in full to the office of the Nebraska Public Service Commission on or before October 22, 2001.

MADE AND ENTERED at Lincoln, Nebraska this 19th day of September, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Frank E. Landis*

*Herald L. Vap*

*Joe Johnson*

*Frank E. Landis*  
Chairman

ATTEST:

*Frank E. Landis*  
Executive Director

//s//Frank E. Landis

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