

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,	)	Application No. NUSF-32.07
on its own motion, seeking to	)	
conduct an inquiry into the	)	
failure of various companies to	)	ORDER SUSTAINING SHOW CAUSE
comply with Commission Rules or	)	IN PART
Orders and to impose	)	
administrative fines.	)	Entered: June 24, 2008

APPEARANCES:

**For Entrix Telecom Inc.:**

Mr. Steven G. Seglin  
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134 S. 13<sup>th</sup> Street  
Suite 400  
Lincoln, Nebraska 68508

**For the Commission Staff:**

Shana Knutson  
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BY THE COMMISSION:

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

As part of its regulatory authority pursuant to the Nebraska Telecommunications Universal Service Fund Act<sup>1</sup> (the NUSF Act) the Commission has adopted requirements to verify the accuracy of Nebraska Universal Service Fund remittances. Pursuant to *Neb. Rev. Stat. § 86-324(2)(d)*, the Commission "shall require, as reasonably necessary, an annual audit of any telecommunications company to be performed by a third-party certified public accountant to insure the billing, collection, and remittance of a surcharge for universal service. The costs of any audit required pursuant to this subdivision shall be paid by the telecommunications company being audited."

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<sup>1</sup> See *Neb. Rev. Stat. § 86-315 et seq.* (Cum. Supp. 2006).

Consistent with this statutory requirement, on April 10, 2007, the Commission entered an Order in Docket No. NUSF-33<sup>2</sup>, adopting remittance audit requirements for all telecommunications carriers contributing to the Nebraska Universal Service Fund (NUSF). As required by Commission Order, remittance audits are to be performed by an independent third party, with audit results for a calendar year being due before the end of the next calendar year.

On February 26, 2008, the Commission initiated this Show Cause proceeding and listed companies who either failed to timely file a complete audit report or failed to file an audit report altogether. That Show Cause Order was revised on March 11, 2008. A hearing was held on May 13, 2008, in the Commission Hearing Room, Lincoln, Nebraska after due notice to the affected carriers.

The Commission hereby enters this order sustaining the Order to Show Cause for certain carriers and reserving ruling on other carriers named in its March 11, 2008 Order.

The record indicated that Gold Line Management, Inc. (Gold Line Management) and My Tel Co., Inc., f/k/a Northstar Telecom, Inc. (My Tel Co, Inc.) and Megapath, f/k/a Netifice (Megapath) each failed to file their remittance audits and failed to respond to the Commission's Order to Show Cause. We find that Gold Line, Megapath, and My Tel Co., Inc. each violated the Commission Order referenced above by failing to file the required audit and then violated the Commission's Show Cause Order by failing to appear. In light of these violations, weighing the gravity and severity of the violations and considering the approved fining policy, the Commission is of the opinion and finds an administrative penalty in the amount of \$3,300.00 should be assessed. Gold Line Management, Megapath, and My Tel Co., Inc. are each hereby ordered to remit \$3,300.00 to the Commission within thirty (30) days from the date this order is entered. Gold Line Management, Megapath, and My Tel Co., Inc. are each further ordered to comply with the remittance audit requirement within sixty (60) days from the date of this Order or face further enforcement proceedings to include, but not be limited to, revocation and further penalties.

Counsel for Entrix Telecom, Inc. (Entrix Telecom) argued the company should have been granted a waiver because it does very little business in Nebraska and the cost of an audit is an administrative burden on Entrix Telecom. Mr. Seglin challenged the waiver criteria as being unfair as applied to Entrix Telecom. In consideration of the arguments, the Commission finds that the

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<sup>2</sup> See NUSF- 33, *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to investigate the audit requirements related to the Nebraska Universal Service Fund*, Order (April 10, 2007).

challenge to the Commission's denial for a waiver is untimely. Such a challenge should have been raised within the appropriate appeal time following the waiver denial order consistent with Neb. Admin. Code, title 291, chapter 1, § 023. Accordingly, we find Entrix Telecom was required to file an audit with the Commission and is in violation of the Commission's order which required it to file its audit. The Commission hereby orders Entrix Telecom to file its audit within 60 days. The Commission further finds an administrative penalty in the amount of \$3,300.00 should be assessed. Entrix Telecom is ordered to remit this penalty to the Commission within thirty (30) days from the date this order is entered. If Entrix Telecom fails to file the required audit within the sixty (60) day timeframe, the Commission may assess further penalties.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Order to Show Cause is sustained in part as provided herein.

IT IS FURTHER ORDERED that Gold Line Management Inc., Megapath, f/k/a Netifice, Entrix Telecom Inc., and My Tel Co., Inc., are each required to remit a penalty payable to the Nebraska Public Service Commission in the amount of Three Thousand Three Hundred Dollars (\$3300.00) within thirty (30) days from the date of this Order.

IT IS FURTHER ORDERED that Gold Line Management Inc., Megapath, f/k/a Netifice, Entrix Telecom, Inc., and My Tel Co., Inc., are each required to file its audit within sixty (60) days from the date of this Order.

MADE AND ENTERED at Lincoln, Nebraska, this 24th day of June, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director