

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) Application No. NUSF-32.09
on its own motion, seeking to)
conduct an inquiry into the)
failure of Telephone Systems of) SHOW CAUSE ORDER SUSTAINED
Nebraska to comply with)
Commission Rules or Orders and)
to impose administrative fines.) Entered: May 12, 2010

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 Act¹ (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

[S]hall 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.

Consistent with this statutory requirement, on April 10, 2007, the Commission entered an Order in Docket No. NUSF-33 adopting remittance audit requirements for all telecommunications carriers contributing to the Nebraska Universal Service Fund (NUSF).² As required by that Order, remittance audits are to be performed by an independent third party, with audit results for a randomly selected audit period. In addition, consistent with that Order, the remittance audit was due on or before December 31st in the year the Commission notified the company of the audit requirement.

On February 23, 2010, the Commission initiated this Show Cause proceeding against Telephone Systems of Nebraska, Inc. (Telephone Systems) because it had failed to timely file a complete audit report with the Commission. The Commission's records indicate that an audit report was filed by Telephone

¹See *Neb. Rev. Stat. § 86-315 et seq.* (2008).

²See 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).

Systems on March 12, 2010. The audit report was filed forty days after the December 31, 2009 deadline.

A hearing on this Show Cause Order was held on March 16, 2010 in Lincoln, Nebraska. Mr. Patrick Buettner, owner of Telephone Systems, appeared at the hearing to explain why the audit was not filed until after this Show Cause proceeding was initiated. Generally, Mr. Buettner questioned why small companies like his should be subject to the audit requirements. He testified that his bookkeeper of 12 years passed away a little over a year ago. His bookkeeper would have been instrumental in the audit process.

Based upon the information presented at the hearing and being fully advised in the premises, the Commission is of the opinion and finds that the Show Cause Order should be sustained; however, a reduction in the civil penalty requested by the Commission staff is warranted. The Nebraska Telecommunications Infrastructure and Public Safety (NTIPS) Department had recommended a penalty of One Thousand Four Hundred and Eighty Dollars (\$1,480.00) which was determined using the Commission's approved fining policy. In light of the mitigating circumstances in this case, the Commission finds that the penalty should be reduced to **Four Hundred Dollars (\$400.00)**. The penalty assessed against Telephone Systems shall be made payable to the Nebraska Public Service Commission and **is due within thirty (30) days** following the date this order is entered.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Show Cause Order entered in the above-captioned matter, be and is hereby, sustained.

IT IS FURTHER ORDERED that Telephone Systems of Nebraska, Inc. be assessed a civil penalty in the amount of **Four Hundred Dollars (\$400.00)** for failing to timely file its required audit report.

IT IS FURTHER ORDERED that penalties assessed against Telephone Systems of Nebraska, Inc. for failing to timely file its audit **shall be due to the Commission within thirty (30) days** following the date of this Order.

MADE AND ENTERED at Lincoln, Nebraska, this 12th day of May,
2010.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director