

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,     ) Application No. NUSF-32.11  
on its own motion, seeking to        )  
conduct an inquiry into the           )  
failure of STiPrepaid, LLC, to        ) ORDER SUSTAINING SHOW CAUSE  
comply with Commission Rules or       ) AND IMPOSING CIVIL PENALTIES  
Orders and to impose                   )  
administrative fines.                   ) Entered: July 31, 2012

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

[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).<sup>2</sup> 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 31<sup>st</sup> in the year the Commission notified the company of the audit requirement.

STi Prepaid, LLC (STi) failed to timely file a complete audit report that was due on December 31, 2011. A Show Cause Hearing was set for April 17, 2012 where STi would have the opportunity to show cause why it failed to timely comply with the Commission's audit filing requirement and why the Commission

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

<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).

should not impose administrative penalties against it pursuant to Neb. Rev. Stat. § 75-156 (2009) for failing to timely comply with the Commission rules and orders described herein. By letter dated April 16, 2012, STi informed the Commission that it would not be able to attend the Show Cause Hearing and submitted its response via said letter. STi acknowledged that its audit was not timely filed and anticipated that it would have the audit completed on or before June 15, 2012.

At the hearing, Commission staff recommended that, consistent with the department fining policy, an administrative penalty of \$3,300 be levied against STi. The Commission received the remittance audit on June 20, 2012.

The Commission's administrative records demonstrate that Respondent did not qualify for a waiver because of its failure to timely file remittances with the Commission. The Commission had opened four (4) complaints against STi in the last five (5) years. The Commission records also demonstrate that numerous attempts to bring Respondent into compliance were made prior to the excessive delay. Had the Respondent been able to communicate with Commission staff about its difficulties filing its remittance audit earlier it may have received an extension of time prior to formal action being necessary by the Commission. The Commission and its staff expended significant resources trying to obtain compliance from Respondent where such costs could have been avoided by good faith efforts of the Respondent. However in this case, Respondent waited until the eve of the Commission complaint proceeding to communicate its difficulties. In light of the factual circumstances presented in this case, the Commission is of the opinion and finds the Order to Show Cause should be sustained and a civil penalty should be assessed against the Respondent in the amount of \$3,300. This penalty amount is consistent with the Commission's fining policy related to late-filed remittance audits. The Respondent shall have thirty (30) days from the date of this Order to remit payment of this penalty to the Commission.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that STi Prepaid, LLC be and is hereby, ordered to submit payment in the amount of \$3,300 as an administrative penalty for failure to timely comply with the Commission's remittance audit requirements.

IT IS FURTHER ORDERED that STi Prepaid, LLC remit payment of this penalty to the Nebraska Public Service Commission within thirty (30) days from the date of this Order.

MADE AND ENTERED at Lincoln, Nebraska, this 31<sup>st</sup> day of July, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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IT IS FURTHER ORDERED that STi Prepaid, LLC remit payment of this penalty to the Nebraska Public Service Commission within thirty (30) days from the date of this Order.

MADE AND ENTERED at Lincoln, Nebraska, this 31<sup>st</sup> day of July, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Tim Schram*

*Anne Boyle*

*Gerald Lutz*

Chairman

*R. Johnson*

ATTEST:

*Michael S. Hylleberg*

Executive Director

//s// Rod Johnson