

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission	)	Application No. NUSF-32
on its own motion, seeking to	)	
conduct an inquiry into the	)	
failure of various companies to	)	
comply with Commission Orders	)	Progression Order #1
and, at its own discretion,	)	
impose administrative fines	)	
against the named defendants.	)	Entered: March 4, 2003

BY THE COMMISSION:

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

The Nebraska Public Service Commission (Commission) initiates this order to consider an additional waiver request with respect to the Commission's audit requirements set forth in NUSF-1, Progression Order No. 7. The Order opening this proceeding required the named defendants to appear and give good cause as to why the Commission should not impose administrative fines for the failure to file timely or adequate audits with the Commission. One of the defendants named in the order opening the above captioned docket was USA Paging, Inc. At the time of the hearing in this proceeding, the attorney for Charter Fiberlink-Nebraska, LLC (Charter) stated that he was looking into the responsibility of Charter for filing the audit for USA Paging, Inc.

By letter dated February 13, 2003, counsel for Charter requested a waiver of the audit requirement as it applied to USA Paging, Inc., an affiliate of Cable USA, Inc., which merged into Charter Communications on August 31, 2001. Upon review of the particular circumstances in these cases set forth below, the Commission concludes the facts of the Cable USA/Charter merger are substantially similar to those involved in the GTE/Citizens waiver request and approval.<sup>1</sup> Some of the pertinent facts are as follows:

On October 10, 2001, a joint application was filed by Charter and Cable USA, requesting the approval of the proposed merger and asset sale, by the Commission. By order entered on July 11, 2001, the Commission approved the proposed asset sale.

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<sup>1</sup> See *In the Matter of the Commission on its own motion, seeking to establish guidelines for administration of the Nebraska Universal Service Fund*, NUSF-1, Progression Order No. 18, entered December 10, 2002.

Following the Commission's approval, the closing of the sale transaction occurred on August 31, 2001, with Charter assuming the operations of Cable USA. As a consequence to the asset purchase, Cable USA and USA Paging, Inc. no longer legally exist. No audits of Cable USA's and USA Paging Inc.'s financial statements were ever performed.

There was no stock transfer and no financial records were provided to Charter upon the sale of Cable USA. Charter did not acquire the accounts or records of Cable USA Group, nor did it assume responsibility for Cable USA's debts or other obligations.

Upon the particular circumstances in this case, the Commission finds that the audit requirement for the period prior to the sale of USA Paging, Inc. to Charter should be waived.

The Commission reiterates its finding that with regards to future sale transactions, the selling party shall be responsible for the fulfillment of all NUSF requirements, including audits, prior to the effective date of any sale.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the audit requirements set forth in NUSF-1, Progression Order No. 7 should be and are hereby waived with respect to USA Paging, Inc.

IT IS FURTHER ORDERED that USA Paging, Inc. is hereby dismissed from this proceeding.

MADE AND ENTERED at Lincoln, Nebraska, this 4th day of March, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director