

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,     ) Application No. NUSF-4  
on its own motion, seeking to         )  
determine the level of the fund       ) ORDER SETTING SURCHARGE ON  
necessary to carry out the             ) EMERGENCY BASIS  
Nebraska Telecommunications           )  
Universal Service Fund Act.           ) Entered: December 19, 2006

BY THE COMMISSION:

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

By Order entered on August 29, 2006, in the above-captioned docket the Commission sought comment on whether it should review and adjust the Nebraska Universal Service Fund (NUSF) surcharge on an emergency basis as provided in *Neb. Rev. Stat. § 86-328(2)(2004 Supp.)*. This section provides,

In an emergency as determined by the commission, the commission may adjust the level of the fund, but only after a public hearing for such purpose.

In July of 2005, the Commission reduced the NUSF surcharge from 6.95 percent to 5.75 percent. Last June, the Commission entered an order maintaining the surcharge at 5.75 percent but directed Mr. Pursley, the Director of the Nebraska Telecommunications Infrastructure and Public Safety (NTIPS) Department to notify the Commission approximately 90 days prior to the fund balance reaching \$15 million. On August 31, 2006, Mr. Pursley filed a letter with the Commission informing it that the fund balance was projected to be at \$15 million at the end of January 2007.

The Commission held a hearing on this matter on November 8, and 9, 2006 after duly publishing notice of the hearing in the Lincoln Journal Star, the Omaha World Herald and the Daily Record on October 25, 2006 and November 1, 2006.

The NUSF Advisory Board recommended the Commission consider raising the NUSF surcharge on an emergency basis to at least 6.25 and not more than 6.95 percent. The Advisory Board recommendation was offered into the record at the November hearing.

A number of interested persons also filed testimony recommending that the Commission increase the surcharge to the

previous level of 6.95 percent. A minority of commenting persons opposed an increase in the surcharge.

In its July 2005 Order setting the surcharge at 5.75, the Commission found,

[T]he surcharge should be lowered to 5.75 percent effective October 1, 2005. Notwithstanding the recommendations of the NUSF Advisory Board and Mr. Pursley, the Commission makes this decision upon careful consideration of the impact on the consumer, universal service needs, and the available tools to the carriers. The Commission recognizes there are pending court cases and Federal Communications Commission decisions that could effect the NUSF; however, the Commission is able to adjust the rate of the fund, if needed, on an emergency basis.

The Commission set the NUSF surcharge at 5.75 percent after carefully considering a number of factors. As indicated by the parties at the November 2006 hearing, a significant factor contributing to the Commission's decision to set the surcharge at 5.75 percent was the large balance of the fund. The Commission remains cautious that the level of the surcharge should be sized appropriately to meet the universal service goals required by statute while not collecting more than it needs to accomplish these goals.

However, the fund balance has been significantly reduced and may reach a point in 2007 prior to the Commission's next annual review to where the fund, without other significant changes, will be required to pay out more than what the balance and remittances can sustain. Given the Commission needs to give affected telecommunications companies adequate notice to adjust their billing processes, the Commission needs to take emergency action today to raise the surcharge to a sustainable level. Accordingly, the Commission takes emergency action to increase the level of the surcharge back to 6.95 percent effective April 1, 2007. The 6.95 percent surcharge should appear on bills rendered on or after April 1, 2007, irrespective of when the service is actually provided.

Additionally, we note that the Commission, in a related proceeding reduced the size of the NUSF by more than \$10 million.<sup>1</sup>

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<sup>1</sup> See *In the Matter of the Nebraska Public Service Commission, on its own motion, to make adjustments to the universal service fund mechanism established in NUSF-26*, Order (December 19, 2006).

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Nebraska Universal Service Fund surcharge be increased to 6.95 percent effective April 1, 2007.

IT IS FURTHER ORDERED that all affected telecommunications companies are hereby required to collect said surcharge and remit it to the Commission as set forth herein and in Commission Universal Service Rules and Regulations and Commission orders.

MADE AND ENTERED at Lincoln, Nebraska this 19<sup>th</sup> day of December, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director