

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Jeffrey L. Pursley, Director of) Application No. NUSF-72
the Nebraska Telecommunications)
Infrastructure and Public Safety)
Department of the Nebraska)
Public Service Commission,)
)
Complainant,)
v.) ORDER DISMISSING COMPLAINT
)
)
Vonage Network, Inc.,)
)
Respondent.)
) Filed: August 25, 2009
)

BY THE COMMISSION:

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

On November 6, 2007 the Nebraska Telecommunications Infrastructure and Public Safety (NTIPS) Director filed a Complaint against Vonage Network, Inc., (Respondent) alleging that it failed to bill, collect and remit the NUSF surcharge pursuant to the Commission's Order in NUSF-1, Progression Order No. 18, entered April 17, 2007, Neb. Rev. Stat. § 86-322 (Reissue 2008), and Title 291 Neb. Admin. Code, Ch. 10, §§ 003.02 through 003.03.

Subsequently, Respondent obtained a preliminary injunction against the Commission prohibiting the Commission from requiring Respondent to bill, collect and remit the NUSF surcharge. See *Vonage Holdings Corp. v. Neb. Pub. Serv. Comm'n*, 543 F.Supp. 1062 (D. Neb. 2008). The decision granting the preliminary injunction was affirmed in *Vonage Holdings Corp. v. Neb. Pub. Serv. Comm'n*, 564 F.3d 900 (8th Cir. 2009). The preliminary injunction was converted to a permanent injunction on August 3, 2009. The Commission, along with the Kansas Corporation Commission, has filed a Petition for Declaratory Ruling with the Federal Communications Commission (FCC). The FCC has requested public comment on that petition.

Based on the recommendation of the NTIPS Department, the Commission is of the opinion and finds the Complaint should be dismissed without prejudice.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned Complaint shall be, and is hereby, dismissed without prejudice.

MADE AND ENTERED at Lincoln, Nebraska, this 25th day of August, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director