

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No.C-3559/DC-72  
Public Service Commission, on )  
its own motion, to collect and ) COMPLAINT DISMISSED IN PART  
review the 2005 Annual Reports ) AND SUSTAINED IN PART  
required to be filed with the )  
Commission pursuant to Nebraska )  
Revised Statute §86-159. ) Entered: September 12, 2006  
)

BY THE COMMISSION:

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

By Petition filed on March 7, 2006, the Communications Department (Department) of the Nebraska Public Service Commission (Commission) opened this docket to collect and review the 2005 Annual Reports required pursuant to Neb. Rev. Stat. §86-159 (2004 Cum. Supp.). All interexchange carriers (IXCs) and competitive local exchange carriers (CLECs) who had not timely filed annual reports with the Commission were named as defendants.

A hearing was held on August 15, 2006, in the Commission Hearing Room, Lincoln, Nebraska, for any defendants who were not previously dismissed from the docket.

All IXCs and CLECs were notified via first class mail on January 31, 2006, of their obligation to file an annual report on or before April 30, 2005. All IXCs and CLECs were notified a second time via first class mail on March 31, 2006. Copies of all of these letters were entered into the record as Exhibits 5 and 6 respectively.

New Edge Networks has filed a letter disputing a \$340 fine, this was entered as Exhibit 7. The Commission also took administrative notice of all previous orders entered in this docket dismissing certain defendants.

The following defendants remain in the docket:

Acceris Communications Corporation  
American Farm Bureau, Inc.  
Buehner-Fry, Inc.  
CenturyTel Long Distance, Inc.

Cross Connect  
Dial-Around Telecom, Inc.  
ECI Communications, Inc.  
Excel Operations, Inc., Telco Holdings Inc.  
Exergy Group, LLC  
Farm Bureau Connection  
Gates Communications, Inc.  
Global Communications Consulting Corporation  
Globalcom, Inc.  
Net One International, Inc.  
New Edge Networks, Inc.  
Pacific Centrex Services, Inc.  
PI-1 Communications, L.P.  
SmartStop, Inc.  
Telefyne, Inc.  
Telmex USA, LLC  
W2 Com International, LLC

Net One International, Inc. (Net One), Cross Connect, and Telmex USA, LLC (Telmex) have each signed stipulations with the Department wherein each admits to filing its report late and agrees to pay an administrative fine to dismiss the departmental complaint. The signed stipulations are satisfactory and therefore, Net One, Cross Connect and Telmex should be dismissed from the complaint.

Net One, Cross Connect and Telmex should be aware that this Commission will not tolerate similar behavior in 2007 regarding the filing of the 2006 report. If reports are not postmarked on or before April 30, 2007, the option of resolving the complaint through a stipulation will be closely scrutinized. All companies that have agreed to such a stipulation will be considered willful violators and be subject to the maximum penalty allowed.

Net One, Cross Connect and Telmex have each complied with the provisions of § 86-159 and have satisfactorily remitted an annual report for the year 2005; therefore, said defendants should be dismissed from this complaint.

SmartStop, Inc. (SmartStop) filed an annual report on the same day the complaint was filed in this action. Since the report was timely filed, SmartStop's listing on the complaint was an administrative oversight and therefore, SmartStop should be dismissed from this complaint.

New Edge Networks, Inc. (New Edge) submitted an appeal to the Commission for removal of the fine for \$340. According to New Edge the Annual Report was mailed on a date that should have, under normal mail transit times, reached the Commission by the due date. The Commission received the New Edge Annual Report filing on May 17, 2006, in a repackaged document envelope from the United States Postal Service (USPS). It appears that the USPS damaged the original envelope from New Edge and it took that agency significant time to repackage and deliver the original documents to the Commission. Based upon these circumstances the fine assessed to New Edge should be waived, and New Edge should be dismissed from this complaint.

Globalcom, Inc. has been in contact with Commission staff and is in the process of filing the appropriate reports to comply with its annual reporting requirement. Commission staff is also in negotiations with Globalcom regarding a stipulation and appropriate fine amount for the late filed financials. Therefore, Globalcom, Inc. should not be revoked at this time but instead will be given until September 15, 2006, to comply with the annual report requirements and negotiate a settlement with staff. The Commission will then take appropriate action. Should staff and Globalcom, Inc. fail to reach an agreement or should Globalcom, Inc. fail to file the required information by September 15, 2006, an order assessing a fine and revoking their authority will be entered.

Consistent with staff recommendations and pursuant to § 86-159 fines should be levied against W2Com International, LLC (W2Com) for failing to submit a timely report for the time in which their certificate of public convenience and necessity was current. However, in light of the fact that W2Com submitted a request for the withdrawal of their certificate prior to the deadline for the annual report, there is no certificate to revoke at this time.

The remaining defendants are telecommunications companies generally regulated by the Commission, pursuant to Neb. Rev. Stat. §§ 75-101, et seq. (2004 Cum. Supp.) and §§ 86-101 et seq. (2004 Cum. Supp.). Defendants are also governed by Title 291 NAC Ch. 5 of the Commission's Rules and Regulations.

As part of its regulatory authority and pursuant to § 86-159, the Commission, through its Communications Department, requires telecommunications companies which file an annual report with a federal agency to file a copy of the same report with the Commission on or before the date on which said report is filed with the federal agency. Every such company not required to file such a report with a federal agency is required to file an annual report with the Commission in a form prescribed by the Commission on or before April 30<sup>th</sup> of each year.

The defendants originally named in the petition failed to comply with the mandates of Neb. Rev. Stat. § 86-159. Therefore, this Commission, pursuant to its legislative authority, may administratively impose fines on all such companies after notice and public hearing or revoke the certificates of public convenience and necessity issued to the defendants.

The Commission subsequently determined that several defendants had adequately complied with the provisions of Neb. Rev. Stat. § 86-159 and had satisfactorily submitted an annual report for the year 2005. Therefore such parties were dismissed from the complaint.

All defendants who contacted the Commission were given the option of negotiating a settlement by submitting an annual report and signing a stipulation with the Department, wherein each defendant admitted to filing their annual report late and agreed to pay an administrative fine to dismiss the departmental complaint against them.

The remaining defendants either did not contact the Commission or did not agree to the terms of the stipulation. Furthermore, all defendants were notified of the hearing and were entitled to appear. Nonetheless no carriers made an appearance at the public hearing to show cause as to why their certificates of authority should not be revoked.

Accordingly, fines should be levied against the following defendants and the Certificates of Public Convenience and Necessity issued to them should be revoked:

Acceris Communications Corporation  
American Farm Bureau, Inc.  
Buehner-Fry, Inc.  
CenturyTel Long Distance, Inc.  
Dial-Around Telecom, Inc.  
ECI Communications, Inc.  
Excel Operations, Inc., Telco Holdings Inc.

Exergy Group, LLC  
Farm Bureau Connection  
Gates Communications, Inc.  
Global Communications Consulting Corporation  
Pacific Centrex Services, Inc.  
PI-1 Communications, L.P.  
Telefyne, Inc.

## O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Net One International, Inc.; Cross Connect; Telmex USA, LLC; SmartStop, Inc.; and New Edge Networks, Inc. be, and are hereby, dismissed from the departmental complaint.

IT IS FURTHER ORDERED that Globalcom, Inc. be given until September 15, 2006, to comply with the annual report requirements and negotiate a settlement with Commission staff for consideration by the Commission. The Commission will then take appropriate action.

IT IS FURTHER ORDERED that fines be levied consistent with the Commission approved fining policy calculated as of the date of the hearing against W2Com International, LLC.

IT IS FURTHER ORDERED that the Certificates of Public Convenience and Necessity issued to the defendants: Acceris Communications Corporation; American Farm Bureau, Inc.; Buehner-Fry, Inc.; CenturyTel Long Distance, Inc.; Dial-Around Telecom, Inc.; ECI Communications, Inc.; Excel Operations, Inc., Telco Holdings Inc.; Exergy Group, LLC; Farm Bureau Connection; Gates Communications, Inc.; Global Communications Consulting Corporation; Pacific Centrex Services, Inc.; PI-1 Communications, L.P.; and Telefyne, Inc. shall be and are hereby revoked.

IT IS FURTHER ORDERED that the defendants revoked herein shall cease and desist providing service in the State of Nebraska within 60 days from the date of this order. Furthermore, said carriers shall give at least 30 days notice of discontinuance of service to their customers and reimburse said customers from any charges associated with obtaining service from a different carrier.

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MADE AND ENTERED at Lincoln, Nebraska, this 12<sup>th</sup> day of September, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

//s// Lowell C. Johnson



//s// Frank E. Landis

  
Chairman

ATTEST:

  
Executive Director