

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Nebraska Public Service Commission Communications Department, regarding the 2008 Annual Report filings. ) Application No. C-4166/DC-76 ) ) ) ORDER TO SHOW CAUSE ) ) Entered: May 12, 2009

BY THE COMMISSION:

The Commission on its own motion opened the present docket to collect and review the 2008 annual reports required pursuant to *Neb. Rev. Stat. § 86-159* (Reissue of 2008) and to process any and all motions or requests related to the annual report. On May 12, 2009, the Communications Department filed a complaint seeking an order assessing civil penalties and revoking the operating authority of each of the Respondents named in the complaint alleging that said carriers failed to timely file an annual report pursuant to *Neb. Rev. Stat. § 86-159* (Reissue of 2008).

A copy of the complaint and this order shall be mailed to each Respondent via certified mail.

The Respondents are telecommunications companies generally regulated by the Commission, pursuant to *Neb. Rev. Stat. § 75-101, et. se.* (2008 Cum. Supp.) and *§ 86-101 et. seq.* (Reissue of 2008). Respondents are also governed by Title 291, *Neb. Admin. Code Title 291, 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 (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 30th of each year.

Each interexchange carrier and local exchange carrier was notified by the staff by first class mail on or about January 31, 2009, and March 31, 2009, that the annual report was due on April 30, 2009. None of the Respondents named in the complaint filed the required annual report for the year 2008 as of April 30, 2009.

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The Commission further finds that Respondents should be ordered to show cause as to why civil penalties should not be assessed and their Certificates of Public Convenience and Necessity should not be revoked. Furthermore, the Commission finds that a hearing should be scheduled on this matter.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that each Respondent is ordered to show cause as to why civil penalties should not be assessed and its Certificate of Necessity and Convenience should not be revoked for failure to satisfy the annual report filing requirements.

IT IS FURTHER ORDERED that a copy of the complaint and this order shall be mailed to each Respondent via certified mail.

IT IS FURTHER ORDERED that any Respondent who subsequently filed a satisfactory annual report may execute a stipulation with the department.

IT IS FINALLY ORDERED that hearing on this matter is scheduled for **August 4, 2009, at 1:30 p.m.** at the Commission Hearing Room, 1200 N Street, Suite 300, Lincoln, Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 12<sup>th</sup> day of May, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



Chairman



ATTEST:



Executive Director



//s// Frank E. Landis



COMES NOW, Maurice Gene Hand, Director of the Communications Department (Department) of the Nebraska Public Service Commission (Commission), and alleges the following:

1. The above-mentioned Respondents are telecommunications companies generally regulated by the Commission, pursuant to Neb. Rev. Stat. §§ 75-101, et seq. (2008 Cum. Supp.) and § 86-101 et. seq. (Reissue of 2008). Respondents are also governed by Neb. Admin. Code Title 291, Ch. 5 of the Commission's Rules and Regulations.

2. 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 30th of each year.

3. None of the Respondents filed the required annual reports for the year 2008 as of April 30, 2009. Each company was notified by the staff by first class mail that the annual report was due: Interexchange carriers and local exchange carriers were both notified on or around January 31, 2009. Additionally, interexchange carriers and local exchange carriers were notified a second time on or around March 31, 2009. None of the Respondents responded by April 30, 2009, and as of the date of this complaint, have not responded and have failed to file an annual report.

4. Based on the failure of the Respondents to file the required annual reports by April 30, 2009, and each Respondent's disregard of the requests to do so, civil penalties should be assessed against each Respondent, each Respondent's certificate of authority should be revoked and each Respondent should be ordered to cease and desist operations in Nebraska.

WHEREFORE, the complainant prays that this Commission

- a. Serve a copy of this complaint on each Respondent via certified mail;
- b. enter an order setting this matter for hearing;



## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Complaint was sent by Certified United States Mail postage prepaid on \_\_\_\_\_, 2009 to the following:

<b><u>Interexchange Carriers</u></b>	
Bandwidth.com, Inc. David Morken 4001 Weston Pkwy, Ste. 100 Cary, NC 27513	NexUSTel, LLC Jorge Asecio 9700 S. Dixie Hwy., Ste. 550 Miami, FL 33156
BetterWorld Telecom, LLC Gloria Costa 11951 Freedom Drive, 13 <sup>th</sup> Floor Reston, VA 20190	Telenational Communications, Inc. Kenyatta Perkins 5408 N. 99 <sup>th</sup> St., Ste. C Omaha, NE 68134
Business Productivity Solutions, Inc. Andoni Economon 44 Wall Street, 6 <sup>th</sup> Floor New York, NY 10005	Telmex USA, LLC Bobbi Ferguson 3350 SW 148 <sup>th</sup> Ave., Ste. 132 Miramar, FL 33027
Dialaround Enterprises, Inc. Jenni Partridge PO Box 20430 New York, NY 10001	United American Technology, Inc. Tom Anderson 1725 S. Fretz Avenue #C Edmond, OK 73013
GTC Telecom Heather Hall 3151 Airway Ave., Ste. K-103 Costa Mesa, CA 92626	U.S. South Communications, Inc. Michelle Richardson 250 Williams Street, Ste. 2360 Atlanta, GA 30303
McLeodUSA Telecommunications Services, Inc. William A. Haas One Martha's Way Hiawatha, IA 52233	USA Digital Communications, Inc. Celeste Eckroat 300 Johnny Bench Dr., Ste. 120 Oklahoma City, OK 73104
<b><u>Local Exchange Carriers:</u></b>	
ACN Communication Services, Inc. Doug Forster 1000 Progress Place NE Concord, NC 28025	McLeodUSA Telecommunications Services Inc. William A. Haas One Martha's Way

	Hiawatha, IA 52233
ALEC, Inc. Mark Hayes 250 W. Main St., Ste. 1920 Lexington, KY 40509	Momentum Telecom, Inc. Charles Richardson III 2700 Corporate Drive, Ste. 200 Birmingham, AL 35242
Bandwidth.com, Inc. David Morken 4001 Weston Pkwy, Ste. 100 Cary, NC 27513	VCI Company dba Vilaire Communications, Inc. Stan Efferding 2228 S. 78 <sup>th</sup> Street Tacoma, WA 98409-9050
HCI Investment Company Lance Morgan 1 Mission Drive Winnebago, NE 68071	

  
Nichole Underhill, #22492

N O T I C E

1. Pursuant to Neb. Admin. R. & Regs., title 291, chapter 1, section 005.09, the Respondent(s) is hereby notified that an answer to this complaint shall be filed and shall admit or deny each material allegation of the complaint. The answer shall assert any affirmative defenses which the Respondent may assert. The answer shall be filed with the Commission within twenty (20) days after service of the complaint. Except for good cause shown, failure to answer will be construed as an admission of the allegations in the complaint. Failure to file an answer or to appear at the hearing allows the Commission to (a) immediately enter an order assessing a civil penalty as provided by law; or (b) to proceed with the hearing and receive evidence of the alleged violation and to assess a civil penalty as provided by law.

2. Pursuant to title 291, chapter 10, section 007.01, the Commission may impose an administrative penalty not to exceed ten thousand dollars (\$10,000.00) for each violation per day up to two million dollars (\$2,000,000) per violation per year.