

AMENDMENTS TO LB 755

Introduced by Transportation and Telecommunications.

1           1. Strike the original sections and insert the following  
2 new sections:

3           Section 1. Section 75-111, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           75-111 The commission shall investigate any and all cases  
6 of alleged neglect or violation of the laws of this state by any  
7 motor carrier or regulated motor carrier as defined in section  
8 75-302 or other common carrier subject to sections 75-101 to  
9 75-801, doing business in this state, or by the officers, agents,  
10 or employees of such carriers, within the jurisdiction of the  
11 commission as enumerated in section 75-109.01 and take such action  
12 with reference to the neglect or violation as may be provided by  
13 law.

14           Sec. 2. Section 75-126, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           75-126 (1) Except as otherwise provided in this section,  
17 no common carrier shall:

18           (a) Charge, demand, collect, or receive from any person  
19 a greater or lesser compensation for any services rendered than  
20 it charges, demands, collects, or receives from any other person  
21 for doing a like or contemporaneous service unless required under  
22 section 86-465;

23           (b) Make or give any undue or unreasonable preference or

1 advantage to any particular person;

2 (c) Subject any type of traffic to any undue or  
3 unreasonable prejudice, delay, or disadvantage in any respect  
4 whatsoever;

5 (d) Charge or receive any greater compensation in the  
6 aggregate for the transportation of a like kind of property or  
7 passengers for a shorter than for a longer distance over the  
8 same line or route, except as the commission may prescribe in  
9 special cases to prevent manifest injuries, except that no manifest  
10 injustice shall be imposed upon any person at intermediate points.  
11 This section shall not prevent the commission from making group or  
12 emergency rates;

13 (e) Demand, charge, or collect, by any device whatsoever,  
14 a lesser or greater compensation for any service rendered than that  
15 filed with or prescribed by the commission; or

16 (f) Change any rate, schedule, or classification in  
17 any manner whatsoever before application has been made to the  
18 commission and permission granted for that purpose, except as  
19 otherwise provided in section 86-155.

20 (2) This section shall not prohibit any common carrier  
21 from, and a common carrier shall not be subject to any fine,  
22 penalty, or forfeiture for, performing services free or at reduced  
23 rates to:

24 (a) The United States, the State of Nebraska, or any  
25 governmental subdivision thereof;

26 (b) The employees, both present and retired, of such  
27 common carrier;

1 (c) Any person when the object is to provide relief in  
2 case of any disaster;

3 (d) Any person who transports property for charitable  
4 purposes;

5 (e) Ministers and others giving their entire time to  
6 religious or charitable work; or

7 (f) Any person who is legally blind or visually  
8 handicapped.

9 Sec. 3. Section 75-156, Revised Statutes Cumulative  
10 Supplement, 2006, is amended to read:

11 75-156 (1) In addition to other penalties and relief  
12 provided by law, the Public Service Commission may, upon a finding  
13 that the violation is proven by clear and convincing evidence,  
14 assess a civil penalty of up to ten thousand dollars per day  
15 against any person, motor carrier, regulated motor carrier, common  
16 carrier, contract carrier, grain dealer, or grain warehouseman  
17 for each violation of (a) any provision of sections 75-301  
18 to 75-390 administered by the commission or section 75-126 as  
19 such section applies to any person or carrier specified in  
20 sections 75-301 to 75-390, (b) a commission order entered pursuant  
21 to the Automatic Dialing-Announcing Devices Act, the Emergency  
22 Telephone Communications Systems Act, the Intrastate Pay-Per-Call  
23 Regulation Act, the Nebraska Telecommunications Regulation Act,  
24 the Nebraska Telecommunications Universal Service Fund Act, or  
25 the Telecommunications Relay System Act, (c) the laws of this  
26 state within the jurisdiction of the commission as enumerated in  
27 section 75-109.01, (b) any term, condition, or limitation of any

1 certificate, ~~or permit, or authority~~ issued by the commission  
2 pursuant to ~~sections 75-301 to 75-390, (d) the laws of this~~  
3 state within the jurisdiction of the commission as enumerated  
4 in section 75-109.01, or (c) any rule, regulation, or order of  
5 the commission issued under authority delegated to the commission  
6 pursuant to ~~sections 75-301 to 75-390, or (e) any rule, regulation,~~  
7 ~~or order of the commission issued under the authority delegated~~  
8 ~~to the commission pursuant to the Grain Dealer Act or the Grain~~  
9 ~~Warehouse Act, the laws of this state within the jurisdiction of~~  
10 the commission as enumerated in section 75-109.01.

11 (2) In addition to other penalties and relief provided  
12 by law, the Public Service Commission may, upon a finding that  
13 the violation is proven by clear and convincing evidence, assess a  
14 civil penalty not less than one hundred dollars and not more than  
15 one thousand dollars against any jurisdictional utility for each  
16 violation of (a) any provision of the State Natural Gas Regulation  
17 Act, (b) any rule, regulation, order, or lawful requirement issued  
18 by the commission pursuant to the act, (c) any final judgment  
19 or decree made by any court upon appeal from any order of  
20 the commission, or (d) any term, condition, or limitation of  
21 any certificate issued by the commission issued under authority  
22 delegated to the commission pursuant to the act. The amount of  
23 the civil penalty assessed in each case shall be based on the  
24 severity of the violation charged. The commission may compromise  
25 or mitigate any penalty prior to hearing if all parties agree.  
26 In determining the amount of the penalty, the commission shall  
27 consider the appropriateness of the penalty in light of the gravity

1 of the violation and the good faith of the violator in attempting  
2 to achieve compliance after notification of the violation is given.

3 (3) In addition to other penalties and relief provided  
4 by law, the Public Service Commission may, upon a finding that  
5 the violation is proven by clear and convincing evidence, assess  
6 a civil penalty of up to ten thousand dollars per day against any  
7 wireless carrier for each violation of the Enhanced Wireless 911  
8 Services Act or any rule, regulation, or order of the commission  
9 issued under authority delegated to the commission pursuant to the  
10 act.

11 (4) In addition to other penalties and relief provided  
12 by law, the Public Service Commission may, upon a finding that  
13 the violation is proven by clear and convincing evidence, assess  
14 a civil penalty of up to one thousand dollars against any person  
15 for each violation of the Nebraska Uniform Standards for Modular  
16 Housing Units Act or the Uniform Standard Code for Manufactured  
17 Homes and Recreational Vehicles or any rule, regulation, or order  
18 of the commission issued under the authority delegated to the  
19 commission pursuant to either act. Each such violation shall  
20 constitute a separate violation with respect to each modular  
21 housing unit, manufactured home, or recreational vehicle, except  
22 that the maximum penalty shall not exceed one million dollars for  
23 any related series of violations occurring within one year from the  
24 date of the first violation.

25 (5) The civil penalty assessed under this section shall  
26 not exceed two million dollars per year for each violation except  
27 as provided in subsection (4) of this section. The amount of

1 the civil penalty assessed in each case shall be based on the  
2 severity of the violation charged. The commission may compromise  
3 or mitigate any penalty prior to hearing if all parties agree.  
4 In determining the amount of the penalty, the commission shall  
5 consider the appropriateness of the penalty in light of the gravity  
6 of the violation and the good faith of the violator in attempting  
7 to achieve compliance after notification of the violation is given.

8 (6) Upon notice and hearing in accordance with this  
9 section and section 75-157, the commission may enter an order  
10 assessing a civil penalty of up to one hundred dollars against any  
11 person, firm, partnership, limited liability company, corporation,  
12 cooperative, or association for failure to file an annual report  
13 or, beginning January 1, 2004, pay the fee as required by section  
14 75-116 and as prescribed by commission rules and regulations or  
15 for failure to register as required by section 86-125 and as  
16 prescribed by commission rules and regulations. Each day during  
17 which the violation continues after the commission has issued an  
18 order finding that a violation has occurred constitutes a separate  
19 offense. Any party aggrieved by an order of the commission under  
20 this section may appeal. The appeal shall be in accordance with the  
21 Administrative Procedure Act.

22 (7) When any person or party is accused of any violation  
23 listed in this section, the commission shall notify such person  
24 or party in writing (a) setting forth the date, facts, and nature  
25 of each act or omission upon which each charge of a violation  
26 is based, (b) specifically identifying the particular statute,  
27 certificate, permit, rule, regulation, or order purportedly

1 violated, (c) that a hearing will be held and the time, date, and  
2 place of the hearing, (d) that in addition to the civil penalty,  
3 the commission may enforce additional penalties and relief as  
4 provided by law, and (e) that upon failure to pay any civil penalty  
5 determined by the commission, the penalty may be collected by civil  
6 action in the district court of Lancaster County.

7 Sec. 4. Section 75-1011, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9 75-1011 ~~Any~~ Notwithstanding section 75-156, any private  
10 water company that violates any provision of the Water Service  
11 Regulation Act or any rule, regulation, or order of the commission  
12 shall be subject to a civil penalty of not less than fifty dollars  
13 nor more than one thousand dollars for each act of violation and  
14 for each day of violation to be recovered as provided in section  
15 75-1012.

16 Sec. 5. Section 75-1012, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 75-1012 (1) ~~Whenever~~ Notwithstanding section 75-156,  
19 whenever it appears that a private water company has violated,  
20 is violating, or is threatening to violate any provision of the  
21 Water Service Regulation Act or any rule, regulation, or order of  
22 the commission, the commission may institute a civil suit in the  
23 district court of Lancaster County for (a) injunctive relief to  
24 restrain the private water company from continuing the violation  
25 or threat of violation, (b) the assessment and recovery of a civil  
26 penalty as provided in section 75-1011, or (c) both injunctive  
27 relief and civil penalty.

1           (2) On application for injunctive relief and a finding  
2 that a private water company is violating or threatening to violate  
3 any provisions of the act or any rule, regulation, or order of the  
4 commission, the district court shall grant the injunctive relief as  
5 the facts may warrant.

6           (3) At the request of the commission, the county attorney  
7 shall institute and pursue a suit in the name of the state for  
8 injunctive relief or to recover the civil penalty, or both, as  
9 authorized in subsection (1) of this section.

10           Sec. 6. Section 86-127, Revised Statutes Cumulative  
11 Supplement, 2006, is amended to read:

12           86-127 (1) One of the goals of the federal  
13 Telecommunications Act of 1996, as such act existed on January  
14 1, 2002, is to foster competition among telephone companies.  
15 Section 271 of the federal act (a) establishes specific incentives,  
16 procedures, and requirements for regional Bell operating companies  
17 to offer inter-LATA interexchange service and (b) requires the  
18 Public Service Commission to monitor the competitive performance of  
19 a regional Bell operating company and to consult with the Federal  
20 Communications Commission regarding such activities.

21           (2) The Nebraska Competitive Telephone Marketplace Fund  
22 is created. The Public Service Commission may accept, and the  
23 fund shall consist of, any voluntary performance payments received  
24 from a regional Bell operating company. The fund shall be used  
25 by the commission for expenses related to the monitoring of  
26 compliance with section 271 of the federal act. If money in the  
27 fund exceeds ~~one hundred~~ thirty thousand dollars, the commission



1 shall remit such excess money to the State Treasurer for credit to  
2 the Nebraska Internet Enhancement Fund. Any money in the Nebraska  
3 Competitive Telephone Marketplace Fund available for investment  
4 shall be invested by the state investment officer pursuant to  
5 the Nebraska Capital Expansion Act and the Nebraska State Funds  
6 Investment Act.

7 Sec. 7. Section 86-209, Revised Statutes Cumulative  
8 Supplement, 2006, is amended to read:

9 86-209 (1) The Notwithstanding section 75-156, the  
10 commission may, after hearing, impose an administrative penalty for  
11 a violation of the Telephone Consumer Slamming Prevention Act. The  
12 penalty for a violation shall not exceed two thousand dollars.  
13 Every violation associated with a specific access line within the  
14 state shall be considered a separate and distinct violation.

15 (2) The amount of an administrative penalty shall be  
16 based on:

17 (a) The nature, circumstances, extent, and gravity of a  
18 prohibited act;

19 (b) The history of previous violations;

20 (c) The amount necessary to deter future violations; and

21 (d) Any efforts to correct the violation.

22 (3) Any money collected by the commission pursuant to  
23 this section shall be remitted to the State Treasurer for credit  
24 to the permanent school fund. The commission shall remit any  
25 administrative penalty collected under this section to the State  
26 Treasurer for distribution in accordance with Article VII, section  
27 5, of the Constitution of Nebraska.

1           (4) Any administrative penalty may be appealed. The  
2 appeal shall be in accordance with the Administrative Procedure  
3 Act.

4           Sec. 8. Section 86-437, Revised Statutes Cumulative  
5 Supplement, 2006, is amended to read:

6           86-437 (1) The amount of service surcharges collected  
7 in one calendar quarter by a service supplier shall be remitted  
8 to the governing body no later than sixty days after the close  
9 of that calendar quarter. At the time of the remittance, the  
10 service supplier shall file a return for the remittance with the  
11 governing body in such form as the governing body and the service  
12 supplier agree upon. The service supplier shall maintain a record  
13 of the amount of service surcharges collected. The record shall be  
14 maintained for a period of one year after the date the amount was  
15 billed. A governing body may at its own expense require an annual  
16 audit of a service supplier's books and records concerning the  
17 collection and remittance of a service surcharge.

18           (2) On or before April 30 of each year, each service  
19 supplier shall report for the preceding calendar year to the  
20 Public Service Commission for each of its exchanges (a) whether  
21 911 service or E-911 service is provided in that exchange, (b)  
22 the level of the service surcharge, (c) ~~the location of the public~~  
23 ~~safety answering point,~~ (d) ~~whether the governing body belongs to~~  
24 ~~an interlocal agreement or other agreement with another governing~~  
25 ~~body and, if so, the name of the other governing body, and (e) to~~  
26 which governing body the service surcharge is being submitted, and  
27 (d) the amount of revenue collected by the service surcharge.

1           (3) The commission shall compile and place the  
2 information from such reports required in subsection (2) of  
3 this section into its annual telecommunications report to the  
4 Legislature, including the availability and location of 911 service  
5 and E-911 service in the State of Nebraska.

6           (4) The commission shall adopt and promulgate rules and  
7 regulations necessary to carry out subsections (2) and (3) of this  
8 section.

9           (5) The commission may administratively fine pursuant to  
10 section 75-156 any person who violates the Emergency Telephone  
11 Communications Systems Act.

12           Sec. 9. Section 86-459, Revised Statutes Supplement,  
13 2007, is amended to read:

14           86-459 (1) Each wireless carrier shall remit monthly to  
15 the commission the amounts collected pursuant to section 86-457  
16 together with any forms required by the commission no later than  
17 sixty days after the last day of the month. The commission shall  
18 remit the funds to the State Treasurer for credit to the Enhanced  
19 Wireless 911 Fund.

20           (2) As the commission may require, each wireless carrier,  
21 except a wireless carrier whose users have no 911 service, shall  
22 report to the commission on a quarterly basis for each county in a  
23 manner prescribed by the commission the following information: (a)  
24 The number of telephone numbers or functional equivalents served;  
25 (b) the number of telephone numbers or functional equivalents  
26 from which it has collected surcharge revenue; (c) the number  
27 of wireless towers by county; and (d) the current implementation

1 status of enhanced wireless 911 service in each county served by  
2 that wireless carrier.

3 (3) The wireless carrier shall maintain all records  
4 required by this section, records of the amounts collected pursuant  
5 to section 86-457, and remittance records for a period of five  
6 years after the date of remittance to the fund. The commission  
7 may require an audit of any wireless carrier's books and records  
8 concerning the collection and remittance of any amounts collected  
9 pursuant to the Enhanced Wireless 911 Services Act. The costs of  
10 any audit required by the commission shall, at the commission's  
11 discretion, be paid by the audited wireless carrier. A wireless  
12 carrier shall not be required to pay for more than one remittance  
13 audit or more than one collection audit per year, unless the  
14 commission orders subsequent audits for good cause.

15 (4) Each wireless carrier shall comply with all  
16 commission rules and regulations regarding enhanced wireless 911  
17 service.

18 (5) Each wireless carrier shall comply with this section  
19 regardless of whether the wireless carrier receives reimbursement  
20 from the fund. Wireless carriers failing to comply with this  
21 section may be administratively fined by the commission pursuant to  
22 section 75-156.

23 Sec. 10. Section 86-465, Revised Statutes Cumulative  
24 Supplement, 2006, is amended to read:

25 86-465 (1) The commission shall, in consultation with the  
26 advisory board:

27 (a) Determine the costs to implement wireless automatic

1 location identification;

2 (b) Determine the level of funding needed to trigger  
3 disbursements pursuant to the Enhanced Wireless 911 Services Act;

4 (c) Determine the percentage of the fund to be allocated  
5 to each funding purpose, including the percentage that shall be  
6 designated for funding 911 service under subdivision (2)(c) of this  
7 section;

8 (d) Determine how the funds distributed under  
9 subdivisions (2)(a) and (2)(c) of this section are to be allocated  
10 among the wireless carriers and the public safety answering points;  
11 and

12 (e) Establish a mechanism for determining the level  
13 of funding available to each public safety answering point and  
14 wireless carrier for costs determined to be eligible by the  
15 commission under subsection (2) of this section.

16 (2) The commission shall, in consultation with the  
17 advisory board, establish eligibility standards and criteria  
18 for fund disbursement applications and standards and criteria  
19 concerning the level of fund disbursement for each application. In  
20 establishing such criteria and standards, the following purposes  
21 may be eligible for funding:

22 (a) Costs incurred or to be incurred by wireless carriers  
23 to implement enhanced wireless 911 service pursuant to a service  
24 agreement with a public safety answering point or pursuant to a  
25 request for service from a public safety answering point. Such  
26 costs may include, but not be limited to, the portion of the costs  
27 for new equipment used for providing enhanced wireless 911 service,

1 costs to lease another vendor's equipment or services to provide  
2 enhanced wireless 911 service, costs to create or maintain any  
3 data base or data base elements used solely for enhanced wireless  
4 911 service, and other costs of establishing enhanced wireless 911  
5 service. The portion of the costs of equipment or services used in  
6 the wireless carrier's main infrastructure resulting in revenue to  
7 the wireless carrier is not eligible for funding;

8 (b) Costs incurred or to be incurred by public safety  
9 answering points to implement enhanced wireless 911 service may  
10 include, but not be limited to, purchases of new equipment, costs  
11 of upgrades, modification and personnel training used solely to  
12 process the data elements of enhanced wireless 911 service, and  
13 maintenance costs and license fees for new equipment;

14 (c) Costs incurred or to be incurred by public safety  
15 answering points for the purchase, installation, maintenance, and  
16 operation of telecommunications equipment and telecommunications  
17 services required for the provision of enhanced wireless 911  
18 service; and

19 (d) Expenses incurred by members of the advisory board  
20 while performing duties required by the act.

21 (3) A wireless carrier receiving funds from the  
22 Enhanced Wireless 911 Fund shall not assess any amount for the  
23 implementation or provision of enhanced wireless 911 service to any  
24 public safety answering point, county, or municipality without the  
25 express consent of the commission.

26 ~~(3)~~ (4) The commission shall have any powers necessary to  
27 carry out the intent and purposes of the act.

1                   Sec. 11. Original sections 75-111, 75-126, 75-1011, and  
2 75-1012, Reissue Revised Statutes of Nebraska, sections 75-156,  
3 86-127, 86-209, 86-437, and 86-465, Revised Statutes Cumulative  
4 Supplement, 2006, and section 86-459, Revised Statutes Supplement,  
5 2007, are repealed.