

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 755

FINAL READING

Introduced by Transportation and Telecommunications Committee:
Fischer, 43, Chairperson; Aguilar, 35; Hudkins, 21;
Lautenbaugh, 18; Louden, 49; Pedersen, 39; Schimek,
27; Stuthman, 22.

Read first time January 09, 2008

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to the Public Service Commission; to amend
2 sections 75-111, 75-126, 75-1011, and 75-1012, Reissue
3 Revised Statutes of Nebraska, sections 75-156, 86-127,
4 86-209, 86-437, and 86-465, Revised Statutes Cumulative
5 Supplement, 2006, and section 86-459, Revised Statutes
6 Supplement, 2007; to change provisions relating to
7 commission powers and duties, common carrier practices,
8 service surcharges and reports, and transfer and use of
9 funds; to harmonize provisions; to repeal the original
10 sections; and to declare an emergency.

11 Be it enacted by the people of the State of Nebraska,

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

3 75-111 The commission shall investigate any and all cases
4 of alleged neglect or violation of the laws of this state ~~by any~~
5 ~~motor carrier or regulated motor carrier as defined in section~~
6 ~~75-302 or other common carrier subject to sections 75-101 to~~
7 ~~75-801, doing business in this state, or by the officers, agents,~~
8 ~~or employees of such carriers, within the jurisdiction of the~~
9 ~~commission as enumerated in section 75-109.01~~ and take such action
10 with reference to the neglect or violation as may be provided by
11 law.

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

14 75-126 (1) Except as otherwise provided in this section,
15 no common carrier shall:

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

21 (b) Make or give any undue or unreasonable preference or
22 advantage to any particular person;

23 (c) Subject any type of traffic to any undue or
24 unreasonable prejudice, delay, or disadvantage in any respect
25 whatsoever;

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

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

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

16 (2) This section shall not prohibit any common carrier
17 from, and a common carrier shall not be subject to any fine,
18 penalty, or forfeiture for, performing services free or at reduced
19 rates to:

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

22 (b) The employees, both present and retired, of such
23 common carrier;

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

1 (d) Any person who transports property for charitable
2 purposes;

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

5 (f) Any person who is legally blind or visually
6 handicapped.

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

9 75-156 (1) In addition to other penalties and relief
10 provided by law, the Public Service Commission may, upon a finding
11 that the violation is proven by clear and convincing evidence,
12 assess a civil penalty of up to ten thousand dollars per day
13 against any person, motor carrier, regulated motor carrier, common
14 carrier, contract carrier, grain dealer, or grain warehouseman
15 for each violation of (a) any provision of sections ~~75-301~~
16 ~~to 75-390 administered by the commission or section 75-126 as~~
17 ~~such section applies to any person or carrier specified in~~
18 ~~sections 75-301 to 75-390, (b) a commission order entered pursuant~~
19 ~~to the Automatic Dialing-Announcing Devices Act, the Emergency~~
20 ~~Telephone Communications Systems Act, the Intrastate Pay-Per-Call~~
21 ~~Regulation Act, the Nebraska Telecommunications Regulation Act,~~
22 ~~the Nebraska Telecommunications Universal Service Fund Act, or~~
23 ~~the Telecommunications Relay System Act, (c) the laws of this~~
24 ~~state within the jurisdiction of the commission as enumerated in~~
25 ~~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.

1 In determining the amount of the penalty, the commission shall
2 consider the appropriateness of the penalty in light of the gravity
3 of the violation and the good faith of the violator in attempting
4 to achieve compliance after notification of the violation is given.

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

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

1 date of the first violation.

2 (5) The civil penalty assessed under this section shall
3 not exceed two million dollars per year for each violation except
4 as provided in subsection (4) of this section. The amount of
5 the civil penalty assessed in each case shall be based on the
6 severity of the violation charged. The commission may compromise
7 or mitigate any penalty prior to hearing if all parties agree.
8 In determining the amount of the penalty, the commission shall
9 consider the appropriateness of the penalty in light of the gravity
10 of the violation and the good faith of the violator in attempting
11 to achieve compliance after notification of the violation is given.

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

1 (7) When any person or party is accused of any violation
2 listed in this section, the commission shall notify such person
3 or party in writing (a) setting forth the date, facts, and nature
4 of each act or omission upon which each charge of a violation
5 is based, (b) specifically identifying the particular statute,
6 certificate, permit, rule, regulation, or order purportedly
7 violated, (c) that a hearing will be held and the time, date, and
8 place of the hearing, (d) that in addition to the civil penalty,
9 the commission may enforce additional penalties and relief as
10 provided by law, and (e) that upon failure to pay any civil penalty
11 determined by the commission, the penalty may be collected by civil
12 action in the district court of Lancaster County.

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

15 75-1011 ~~Any~~ Notwithstanding section 75-156, any private
16 water company that violates any provision of the Water Service
17 Regulation Act or any rule, regulation, or order of the commission
18 shall be subject to a civil penalty of not less than fifty dollars
19 nor more than one thousand dollars for each act of violation and
20 for each day of violation to be recovered as provided in section
21 75-1012.

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

24 75-1012 (1) ~~Whenever~~ Notwithstanding section 75-156,
25 whenever it appears that a private water company has violated,

1 is violating, or is threatening to violate any provision of the
2 Water Service Regulation Act or any rule, regulation, or order of
3 the commission, the commission may institute a civil suit in the
4 district court of Lancaster County for (a) injunctive relief to
5 restrain the private water company from continuing the violation
6 or threat of violation, (b) the assessment and recovery of a civil
7 penalty as provided in section 75-1011, or (c) both injunctive
8 relief and civil penalty.

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

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

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

20 86-127 (1) One of the goals of the federal
21 Telecommunications Act of 1996, as such act existed on January
22 1, 2002, is to foster competition among telephone companies.
23 Section 271 of the federal act (a) establishes specific incentives,
24 procedures, and requirements for regional Bell operating companies
25 to offer inter-LATA interexchange service and (b) requires the

1 Public Service Commission to monitor the competitive performance of
2 a regional Bell operating company and to consult with the Federal
3 Communications Commission regarding such activities.

4 (2) The Nebraska Competitive Telephone Marketplace Fund
5 is created. The Public Service Commission may accept, and the
6 fund shall consist of, any voluntary performance payments received
7 from a regional Bell operating company. The fund shall be used
8 by the commission for expenses related to the monitoring of
9 compliance with section 271 of the federal act. If money in the
10 fund exceeds ~~one hundred~~ thirty thousand dollars, the commission
11 shall remit such excess money to the State Treasurer for credit to
12 the Nebraska Internet Enhancement Fund. Any money in the Nebraska
13 Competitive Telephone Marketplace Fund available for investment
14 shall be invested by the state investment officer pursuant to
15 the Nebraska Capital Expansion Act and the Nebraska State Funds
16 Investment Act.

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

19 86-209 (1) The Notwithstanding section 75-156, the
20 commission may, after hearing, impose an administrative penalty for
21 a violation of the Telephone Consumer Slamming Prevention Act. The
22 penalty for a violation shall not exceed two thousand dollars.
23 Every violation associated with a specific access line within the
24 state shall be considered a separate and distinct violation.

25 (2) The amount of an administrative penalty shall be

1 based on:

2 (a) The nature, circumstances, extent, and gravity of a
3 prohibited act;

4 (b) The history of previous violations;

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

6 (d) Any efforts to correct the violation.

7 (3) ~~Any money collected by the commission pursuant to~~
8 ~~this section shall be remitted to the State Treasurer for credit~~
9 ~~to the permanent school fund.~~ The commission shall remit any
10 administrative penalty collected under this section to the State
11 Treasurer for distribution in accordance with Article VII, section
12 5, of the Constitution of Nebraska.

13 (4) Any administrative penalty may be appealed. The
14 appeal shall be in accordance with the Administrative Procedure
15 Act.

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

18 86-437 (1) The amount of service surcharges collected
19 in one calendar quarter by a service supplier shall be remitted
20 to the governing body no later than sixty days after the close
21 of that calendar quarter. At the time of the remittance, the
22 service supplier shall file a return for the remittance with the
23 governing body in such form as the governing body and the service
24 supplier agree upon. The service supplier shall maintain a record
25 of the amount of service surcharges collected. The record shall be

1 maintained for a period of one year after the date the amount was
2 billed. A governing body may at its own expense require an annual
3 audit of a service supplier's books and records concerning the
4 collection and remittance of a service surcharge.

5 (2) On or before April 30 of each year, each service
6 supplier shall report for the preceding calendar year to the
7 Public Service Commission for each of its exchanges (a) whether
8 911 service or E-911 service is provided in that exchange, (b)
9 the level of the service surcharge, (c) ~~the location of the public~~
10 ~~safety answering point,~~ (d) ~~whether the governing body belongs to~~
11 ~~an interlocal agreement or other agreement with another governing~~
12 ~~body and, if so, the name of the other governing body,~~ and (e) to
13 which governing body the service surcharge is being submitted, and
14 (d) the amount of revenue collected by the service surcharge.

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

20 (4) The commission shall adopt and promulgate rules and
21 regulations necessary to carry out subsections (2) and (3) of this
22 section.

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

1 Sec. 9. Section 86-459, Revised Statutes Supplement,
2 2007, is amended to read:

3 86-459 (1) Each wireless carrier shall remit monthly to
4 the commission the amounts collected pursuant to section 86-457
5 together with any forms required by the commission no later than
6 sixty days after the last day of the month. The commission shall
7 remit the funds to the State Treasurer for credit to the Enhanced
8 Wireless 911 Fund.

9 (2) As the commission may require, each wireless carrier,
10 except a wireless carrier whose users have no 911 service, shall
11 report to the commission on a quarterly basis for each county in a
12 manner prescribed by the commission the following information: (a)
13 The number of telephone numbers or functional equivalents served;
14 (b) the number of telephone numbers or functional equivalents
15 from which it has collected surcharge revenue; (c) the number
16 of wireless towers by county; and (d) the current implementation
17 status of enhanced wireless 911 service in each county served by
18 that wireless carrier.

19 (3) The wireless carrier shall maintain all records
20 required by this section, records of the amounts collected pursuant
21 to section 86-457, and remittance records for a period of five
22 years after the date of remittance to the fund. The commission
23 may require an audit of any wireless carrier's books and records
24 concerning the collection and remittance of any amounts collected
25 pursuant to the Enhanced Wireless 911 Services Act. The costs of

1 any audit required by the commission shall, at the commission's
2 discretion, be paid by the audited wireless carrier. A wireless
3 carrier shall not be required to pay for more than one remittance
4 audit or more than one collection audit per year, unless the
5 commission orders subsequent audits for good cause.

6 (4) Each wireless carrier shall comply with all
7 commission rules and regulations regarding enhanced wireless 911
8 service.

9 (5) Each wireless carrier shall comply with this section
10 regardless of whether the wireless carrier receives reimbursement
11 from the fund. Wireless carriers failing to comply with this
12 section may be administratively fined by the commission pursuant to
13 section 75-156.

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

16 86-465 (1) The commission shall, in consultation with the
17 advisory board:

18 (a) Determine the costs to implement wireless automatic
19 location identification;

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

22 (c) Determine the percentage of the fund to be allocated
23 to each funding purpose, including the percentage that shall be
24 designated for funding 911 service under subdivision (2) (c) of this
25 section;

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

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

9 (2) The commission shall, in consultation with the
10 advisory board, establish eligibility standards and criteria
11 for fund disbursement applications and standards and criteria
12 concerning the level of fund disbursement for each application. In
13 establishing such criteria and standards, the following purposes
14 may be eligible for funding:

15 (a) Costs incurred or to be incurred by wireless carriers
16 to implement enhanced wireless 911 service pursuant to a service
17 agreement with a public safety answering point or pursuant to a
18 request for service from a public safety answering point. Such
19 costs may include, but not be limited to, the portion of the costs
20 for new equipment used for providing enhanced wireless 911 service,
21 costs to lease another vendor's equipment or services to provide
22 enhanced wireless 911 service, costs to create or maintain any
23 data base or data base elements used solely for enhanced wireless
24 911 service, and other costs of establishing enhanced wireless 911
25 service. The portion of the costs of equipment or services used in

1 the wireless carrier's main infrastructure resulting in revenue to
2 the wireless carrier is not eligible for funding;

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

9 (c) Costs incurred or to be incurred by public safety
10 answering points for the purchase, installation, maintenance, and
11 operation of telecommunications equipment and telecommunications
12 services required for the provision of enhanced wireless 911
13 service; and

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

16 (3) A wireless carrier receiving funds from the Enhanced
17 Wireless 911 Fund shall not directly assess any of the costs
18 associated with the implementation or provision of enhanced
19 wireless 911 service to any public safety answering point, county,
20 or municipality without the express consent of the commission.

21 ~~(3)~~ (4) The commission shall have any powers necessary to
22 carry out the intent and purposes of the act.

23 Sec. 11. Original sections 75-111, 75-126, 75-1011, and
24 75-1012, Reissue Revised Statutes of Nebraska, sections 75-156,
25 86-127, 86-209, 86-437, and 86-465, Revised Statutes Cumulative

LB 755

LB 755

1 Supplement, 2006, and section 86-459, Revised Statutes Supplement,
2 2007, are repealed.

3 Sec. 12. Since an emergency exists, this act takes effect
4 when passed and approved according to law.