

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 755

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  
2 amend sections 75-111, 75-155, 75-1011, and 75-1012,  
3 Reissue Revised Statutes of Nebraska, sections 75-156,  
4 86-127, 86-209, 86-437, and 86-470, Revised Statutes  
5 Cumulative Supplement, 2006, and sections 75-302,  
6 75-371, and 86-459, Revised Statutes Supplement, 2007;  
7 to change provisions relating to service suppliers,  
8 wireless carriers, and the Nebraska Competitive Telephone  
9 Marketplace Fund and to the commission's powers and  
10 duties regarding civil penalties, violations, and  
11 enforcement; to harmonize provisions; and to repeal the  
12 original sections.

13 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, regarding any subject enumerated~~  
9 ~~in section 75-109.01~~ and take such action with reference to the  
10 neglect or violation as may be provided by law.

11          Sec. 2. Section 75-155, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13          75-155 Unless a more specific criminal penalty is  
14 provided, any person who knowingly and willfully violates Chapter  
15 75 or 86, any rule, regulation, ~~or order,~~ or lawful requirement  
16 issued by ~~of~~ the commission, or any term or condition of any permit  
17 or certificate issued by the commission is guilty of a Class IV  
18 misdemeanor. Each day of such violation constitutes a separate  
19 offense.

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

22          75-156 (1) In addition to other penalties and relief  
23 provided by law, the Public Service Commission may, upon a finding  
24 that the violation is proven by clear and convincing evidence,  
25 assess a civil penalty of up to ten thousand dollars per day

1 against any person, motor carrier, regulated motor carrier, common  
2 carrier, contract carrier, grain dealer, or grain warehouseman  
3 for each violation of (a) any provision of sections 75-301  
4 to 75-390 administered by the commission or section 75-126 as  
5 such section applies to any person or carrier specified in  
6 sections 75-301 to 75-390, (b) a commission order entered pursuant  
7 to the Automatic Dialing-Announcing Devices Act, the Emergency  
8 Telephone Communications Systems Act, the Intrastate Pay-Per-Call  
9 Regulation Act, the Nebraska Telecommunications Regulation Act,  
10 the Nebraska Telecommunications Universal Service Fund Act, or the  
11 Telecommunications Relay System Act, (c) the laws of this state  
12 regarding any subject enumerated in section 75-109.01, (b) any  
13 term, condition, or limitation of any certificate, or permit, or  
14 authority issued by the commission pursuant to sections 75-301 to  
15 75-390, (d) the laws of this state regarding any subject enumerated  
16 in section 75-109.01, or (c) any rule, regulation, or order,  
17 or lawful requirement issued by of the commission issued under  
18 authority delegated to the commission pursuant to sections 75-301  
19 to 75-390, or (e) any rule, regulation, or order of the commission  
20 issued under the authority delegated to the commission pursuant to  
21 the Grain Dealer Act or the Grain Warehouse Act. the laws of this  
22 state regarding any subject enumerated in section 75-109.01.

23 (2) In addition to other penalties and relief provided  
24 by law, the Public Service Commission may, upon a finding that  
25 the violation is proven by clear and convincing evidence, assess a

1 civil penalty not less than one hundred dollars and not more than  
2 one thousand dollars against any jurisdictional utility for each  
3 violation of (a) any provision of the State Natural Gas Regulation  
4 Act, (b) any rule, regulation, order, or lawful requirement issued  
5 by the commission pursuant to the act, (c) any final judgment  
6 or decree made by any court upon appeal from any order of  
7 the commission, or (d) any term, condition, or limitation of  
8 any certificate issued by the commission issued under authority  
9 delegated to the commission pursuant to the act. The amount of  
10 the civil penalty assessed in each case shall be based on the  
11 severity of the violation charged. The commission may compromise  
12 or mitigate any penalty prior to hearing if all parties agree.  
13 In determining the amount of the penalty, the commission shall  
14 consider the appropriateness of the penalty in light of the gravity  
15 of the violation and the good faith of the violator in attempting  
16 to achieve compliance after notification of the violation is given.

17 (3) In addition to other penalties and relief provided  
18 by law, the Public Service Commission may, upon a finding that  
19 the violation is proven by clear and convincing evidence, assess  
20 a civil penalty of up to ten thousand dollars per day against  
21 any wireless carrier for each violation of the Enhanced Wireless  
22 911 Services Act or any rule, regulation, ~~or~~ order, or lawful  
23 requirement issued by ~~of~~ the commission issued under authority  
24 delegated to the commission pursuant to the act.

25 (4) In addition to other penalties and relief provided

1 by law, the Public Service Commission may, upon a finding that  
2 the violation is proven by clear and convincing evidence, assess  
3 a civil penalty of up to one thousand dollars against any person  
4 for each violation of the Nebraska Uniform Standards for Modular  
5 Housing Units Act or the Uniform Standard Code for Manufactured  
6 Homes and Recreational Vehicles or any rule, regulation, ~~or order,~~  
7 or lawful requirement issued by ~~of the commission issued~~ under the  
8 authority delegated to the commission pursuant to either act. Each  
9 such violation shall constitute a separate violation with respect  
10 to each modular housing unit, manufactured home, or recreational  
11 vehicle, except that the maximum penalty shall not exceed one  
12 million dollars for any related series of violations occurring  
13 within one year from the date of the first violation.

14 (5) The civil penalty assessed under this section shall  
15 not exceed two million dollars per year for each violation except  
16 as provided in subsection (4) of this section. The amount of  
17 the civil penalty assessed in each case shall be based on the  
18 severity of the violation charged. The commission may compromise  
19 or mitigate any penalty prior to hearing if all parties agree.  
20 In determining the amount of the penalty, the commission shall  
21 consider the appropriateness of the penalty in light of the gravity  
22 of the violation and the good faith of the violator in attempting  
23 to achieve compliance after notification of the violation is given.

24 (6) Upon notice and hearing in accordance with this  
25 section and section 75-157, the commission may enter an order

1 assessing a civil penalty of up to one hundred dollars against any  
2 person, firm, partnership, limited liability company, corporation,  
3 cooperative, or association for failure to file an annual report  
4 or, beginning January 1, 2004, pay the fee as required by section  
5 75-116 and as prescribed by commission rules and regulations or  
6 for failure to register as required by section 86-125 and as  
7 prescribed by commission rules and regulations. Each day during  
8 which the violation continues after the commission has issued an  
9 order finding that a violation has occurred constitutes a separate  
10 offense. Any party aggrieved by an order of the commission under  
11 this section may appeal. The appeal shall be in accordance with the  
12 Administrative Procedure Act.

13 (7) When any person or party is accused of any violation  
14 listed in this section, the commission shall notify such person  
15 or party in writing (a) setting forth the date, facts, and  
16 nature of each act or omission upon which each charge of a  
17 violation is based, (b) specifically identifying the particular  
18 statute, certificate, permit, rule, regulation, ~~or~~ order, or lawful  
19 requirement issued by the commission purportedly violated, (c) that  
20 a hearing will be held and the time, date, and place of the  
21 hearing, (d) that in addition to the civil penalty, the commission  
22 may enforce additional penalties and relief as provided by law, and  
23 (e) that upon failure to pay any civil penalty determined by the  
24 commission, the penalty may be collected by civil action in the  
25 district court of Lancaster County.

1           Sec. 4. Section 75-302, Revised Statutes Supplement,  
2 2007, is amended to read:

3           75-302 For purposes of sections 75-301 to 75-322 and in  
4 all rules and regulations adopted and promulgated by the commission  
5 pursuant to such sections, unless the context otherwise requires:

6           (1) Carrier enforcement division means the carrier  
7 enforcement division of the Nebraska State Patrol or the Nebraska  
8 State Patrol;

9           (2) Certificate means a certificate of public convenience  
10 and necessity issued under Chapter 75, article 3, to common  
11 carriers by motor vehicle;

12           (3) Civil penalty means any monetary penalty assessed by  
13 the commission or carrier enforcement division due to a violation  
14 of Chapter 75, article 3, or section 75-126 as such section applies  
15 to any person or carrier specified in Chapter 75, article 3; any  
16 term, condition, or limitation of any certificate or permit issued  
17 pursuant to Chapter 75, article 3; or any rule, regulation, ~~or~~  
18 order, or lawful requirement issued by ~~of~~ the commission, the  
19 Division of Motor Carrier Services, or the carrier enforcement  
20 division issued pursuant to Chapter 75, article 3;

21           (4) Commission means the Public Service Commission;

22           (5) Common carrier means any person who or which  
23 undertakes to transport passengers or household goods for the  
24 general public in intrastate commerce by motor vehicle for hire,  
25 whether over regular or irregular routes, upon the highways of this

1 state;

2 (6) Contract carrier means any motor carrier which  
3 transports passengers or household goods for hire other than  
4 as a common carrier designed to meet the distinct needs of each  
5 individual customer or a specifically designated class of customers  
6 without any limitation as to the number of customers it can serve  
7 within the class;

8 (7) Division of Motor Carrier Services means the Division  
9 of Motor Carrier Services of the Department of Motor Vehicles;

10 (8) Escort services means an attendant or caregiver  
11 accompanying a minor or persons who are physically, mentally,  
12 or developmentally disabled and unable to travel or wait without  
13 assistance or supervision;

14 (9) Highway means the roads, highways, streets, and ways  
15 in this state;

16 (10) Household goods means personal effects and property  
17 used or to be used in a dwelling, when a part of the equipment  
18 or supply of such dwelling, and similar property as the commission  
19 may provide by regulation if the transportation of such effects or  
20 property, is:

21 (a) Arranged and paid for by the householder, including  
22 transportation of property from a factory or store when the  
23 property is purchased by the householder with the intent to use in  
24 his or her dwelling; or

25 (b) Arranged and paid for by another party;



1           (11) Intrastate commerce means commerce between any place  
2 in this state and any other place in this state and not in part  
3 through any other state;

4           (12) Motor carrier means any person other than a  
5 regulated motor carrier who or which owns, controls, manages,  
6 operates, or causes to be operated any motor vehicle used to  
7 transport passengers or property over any public highway in this  
8 state;

9           (13) Motor vehicle means any vehicle, machine, tractor,  
10 trailer, or semitrailer propelled or drawn by mechanical power  
11 and used upon the highways in the transportation of passengers  
12 or property but does not include any vehicle, locomotive, or car  
13 operated exclusively on a rail or rails;

14           (14) Permit means a permit issued under Chapter 75,  
15 article 3, to contract carriers by motor vehicle;

16           (15) Person means any individual, firm, partnership,  
17 limited liability company, corporation, company, association,  
18 or joint-stock association and includes any trustee, receiver,  
19 assignee, or personal representative thereof;

20           (16) Private carrier means any motor carrier which  
21 owns, controls, manages, operates, or causes to be operated a  
22 motor vehicle to transport passengers or property to or from  
23 its facility, plant, or place of business or to deliver to  
24 purchasers its products, supplies, or raw materials (a) when such  
25 transportation is within the scope of and furthers a primary

1 business of the carrier other than transportation and (b) when  
2 not for hire. Nothing in sections 75-301 to 75-322 shall apply to  
3 private carriers; and

4 (17) Regulated motor carrier means any person who or  
5 which owns, controls, manages, operates, or causes to be operated  
6 any motor vehicle used to transport passengers, other than those  
7 excepted under section 75-303, or household goods over any public  
8 highway in this state.

9 Sec. 5. Section 75-371, Revised Statutes Supplement,  
10 2007, is amended to read:

11 75-371 Any person, private carrier, common carrier, or  
12 contract carrier which operates any motor vehicle in violation  
13 of section 75-307 or any rule, regulation, ~~or~~ order, or lawful  
14 requirement issued by ~~of~~ the commission pertaining to such section  
15 shall be guilty of a Class IV misdemeanor. Each day of such  
16 violation shall constitute a separate offense.

17 Sec. 6. Section 75-1011, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

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

1           Sec. 7. Section 75-1012, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           75-1012 (1) ~~Whenever~~ Notwithstanding section 75-156,  
4 whenever it appears that a private water company has violated,  
5 is violating, or is threatening to violate any provision of the  
6 Water Service Regulation Act or any rule, regulation, ~~or~~ order, or  
7 lawful requirement issued by ~~of~~ the commission, the commission may  
8 institute a civil suit in the district court of Lancaster County  
9 for (a) injunctive relief to restrain the private water company  
10 from continuing the violation or threat of violation, (b) the  
11 assessment and recovery of a civil penalty as provided in section  
12 75-1011, or (c) both injunctive relief and civil penalty.

13           (2) On application for injunctive relief and a finding  
14 that a private water company is violating or threatening to violate  
15 any provisions of the act or any rule, regulation, ~~or~~ order, or  
16 lawful requirement issued by ~~of~~ the commission, the district court  
17 shall grant the injunctive relief as the facts may warrant.

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

22           Sec. 8. Section 86-127, Revised Statutes Cumulative  
23 Supplement, 2006, is amended to read:

24           86-127 (1) One of the goals of the federal  
25 Telecommunications Act of 1996, as such act existed on January

1 1, 2002, is to foster competition among telephone companies.  
2 Section 271 of the federal act (a) establishes specific incentives,  
3 procedures, and requirements for regional Bell operating companies  
4 to offer inter-LATA interexchange service and (b) requires the  
5 Public Service Commission to monitor the competitive performance of  
6 a regional Bell operating company and to consult with the Federal  
7 Communications Commission regarding such activities.

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

21 Sec. 9. Section 86-209, Revised Statutes Cumulative  
22 Supplement, 2006, is amended to read:

23 86-209 (1) The Notwithstanding section 75-156, the  
24 commission may, after hearing, impose an administrative penalty for  
25 a violation of the Telephone Consumer Slamming Prevention Act. The

1 penalty for a violation shall not exceed two thousand dollars.  
2 Every violation associated with a specific access line within the  
3 state shall be considered a separate and distinct violation.

4 (2) The amount of an administrative penalty shall be  
5 based on:

6 (a) The nature, circumstances, extent, and gravity of a  
7 prohibited act;

8 (b) The history of previous violations;

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

10 (d) Any efforts to correct the violation.

11 (3) ~~Any money collected by the commission pursuant to~~  
12 ~~this section shall be remitted to the State Treasurer for credit~~  
13 ~~to the permanent school fund.~~ The commission shall remit any  
14 administrative penalty collected under this section to the State  
15 Treasurer for distribution in accordance with Article VII, section  
16 5, of the Constitution of Nebraska.

17 (4) Any administrative penalty may be appealed. The  
18 appeal shall be in accordance with the Administrative Procedure  
19 Act.

20 Sec. 10. Section 86-437, Revised Statutes Cumulative  
21 Supplement, 2006, is amended to read:

22 86-437 (1) The amount of service surcharges collected  
23 in one calendar quarter by a service supplier shall be remitted  
24 to the governing body no later than sixty days after the close  
25 of that calendar quarter. At the time of the remittance, the

1 service supplier shall file a return for the remittance with the  
2 governing body in such form as the governing body and the service  
3 supplier agree upon. The service supplier shall maintain a record  
4 of the amount of service surcharges collected. The record shall be  
5 maintained for a period of one year after the date the amount was  
6 billed. A governing body may at its own expense require an annual  
7 audit of a service supplier's books and records concerning the  
8 collection and remittance of a service surcharge.

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

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

24 (4) The commission shall adopt and promulgate rules and  
25 regulations necessary to carry out subsections (2) and (3) of this

1 section.

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

5 Sec. 11. Section 86-459, Revised Statutes Supplement,  
6 2007, is amended to read:

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

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

23 (3) The wireless carrier shall maintain all records  
24 required by this section, records of the amounts collected pursuant  
25 to section 86-457, and remittance records for a period of five

1 years after the date of remittance to the fund. The commission  
2 may require an audit of any wireless carrier's books and records  
3 concerning the collection and remittance of any amounts collected  
4 pursuant to the Enhanced Wireless 911 Services Act. The costs of  
5 any audit required by the commission shall, at the commission's  
6 discretion, be paid by the audited wireless carrier. A wireless  
7 carrier shall not be required to pay for more than one remittance  
8 audit or more than one collection audit per year, unless the  
9 commission orders subsequent audits for good cause.

10 (4) Each wireless carrier shall comply with all  
11 commission rules and regulations regarding enhanced wireless 911  
12 service.

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

18 Sec. 12. Section 86-470, Revised Statutes Cumulative  
19 Supplement, 2006, is amended to read:

20 86-470 The commission may assess a civil penalty pursuant  
21 to section 75-156 for each violation of any provision of the  
22 Enhanced Wireless 911 Services Act or any rule, regulation, ~~or~~  
23 order, or lawful requirement issued by ~~of~~ the commission issued  
24 under authority delegated to the commission pursuant to the act.

25 Sec. 13. Original sections 75-111, 75-155, 75-1011, and



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1 75-1012, Reissue Revised Statutes of Nebraska, sections 75-156,  
2 86-127, 86-209, 86-437, and 86-470, Revised Statutes Cumulative  
3 Supplement, 2006, and sections 75-302, 75-371, and 86-459, Revised  
4 Statutes Supplement, 2007, are repealed.