

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. XC-2006-_____
	)	
Gates Communications, Inc.	)	
	)	
Respondent.	)	

**COMPLAINT**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff) and initiates its Complaint pursuant to Section 386.390 RSMo (2000) and 4 C.S.R. 240-2.070 against Gates Communications, Inc. (Gates or Company) for violation of the Commission’s statutes and rules relating to annual report submissions. In support of its Complaint, Staff respectfully states as follows:

**GENERAL ALLEGATIONS**

1. The Missouri Public Service Commission (Commission) granted Gates Communications, Inc. a certificate of service authority to provide interexchange telecommunications services on March 21, 2001 (Case No. TA-2001-456).

2. Respondent Gates Communications, Inc. is a “telecommunications company” as defined in Section 386.020(51) RSMo (2000) (Supp. 2005) and a “public utility” as defined in Section 386.020(42) RSMo (2000) (Supp. 2005) and is subject to the jurisdiction of the Commission pursuant to Section 386.250 RSMo (2000).

3. The Company has provided the following contact information to the Commission:

1100 Olive Way  
Suite 951  
Seattle, WA 98101

Gates Communications, Inc. is an active Washington corporation. The Missouri Secretary of State's website lists the Company as in good standing. The Company's registered agent in Missouri is TCS Corporate Services, Inc., 222 E. Dunklin, Suite 102, Jefferson City, MO 65101.

4. Section 386.390.1 RSMo (2000) authorizes the Commission to entertain a complaint "setting forth any act or thing done or omitted to be done by any. . .public utility. . .in violation. . .of any provision of law, or of any rule or order or decision of the commission."

5. The Commission's Staff, through the General Counsel, may file a complaint. 4 C.S.R. 240-2.070(1).

6. "[T]he [Commission] should first determine in matters within its jurisdiction if someone is operating unlawfully before the courts should be called upon to act." *State v. Carroll*, 620 S.W.2d 22, 24 (Mo. App. S.D. 1981). Accordingly, the Commission can authorize a penalty action in circuit court only after a contested hearing has been held. *State ex rel. Sure-Way Transportation, Inc. v. Division of Transportation, Department of Economic Development, State of Missouri*, 836 S.W.2d 23, 27 (Mo. App. W.D. 1992), *citing Carroll*, 620 S.W.2d 22. If the Commission determines after a contested hearing that the company failed, omitted, or neglected to file its annual report

and/or pay its annual assessment, the Commission may then authorize its General Counsel to bring a penalty action in circuit court. Section 386.600 RSMo (2000).

### **COUNT ONE**

7. Telecommunications companies are required to “file an annual report with the Commission at a time and covering the yearly period fixed by the commission.” Section 392.210.1 RSMo (2000).

8. Commission rules require telecommunications companies to file annual reports on or before April 15 of each year. 4 C.S.R. 240-3.540(1).

9. On January 17, 2006 the Executive Director of the Commission, in compliance with Section 392.210.1 RSMo (2000) sent all regulated utilities, including Gates Communications, Inc., a letter notifying them of the requirement to file, on or before April 15, an annual report covering the calendar year 2005, together with the appropriate form for the Company to complete and return to the Commission, and instructions on how the Company could complete its filing electronically. The letter that was sent to Gates was not returned.

10. The Company did not return a completed form, nor did it file its annual report electronically; and as of the date of this pleading, has not filed its 2005 annual report. *See*, Affidavit of Janis Fischer, attached to this Complaint as Exhibit A.

11. “Any such person or corporation which shall neglect to make any such report. . .shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file. . .the same, to be sued for in the name of the state of Missouri.” Section 393.140(6) RSMo (2000).

12. The Commission's Rule at 4 C.S.R. 240-2.070(5)(E) requires "a statement as to whether the complainant has directly contacted the person, corporation, or public utility about which complaint is being made." In addition to the letter and form the Executive Director sent in January 2006, Staff left a telephone message on June 6, 2006 informing the Company that it was out of compliance with the Commission's annual report requirement and requested a return call. A second call on June 14 resulted in a message that the answering machine was full. Staff left another message on June 21 informing the Company that Staff would file a complaint if no resolution was forthcoming. The answering machine was full on July 7. On July 17, Staff left a message that a complaint would be filed. The message on the answering machine stated that the number was that of Gates Communications, Inc. and that the owner was "at home" and asked callers to leave a message so the call could be returned. None of Staff's calls have been returned as of the date of this filing.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Staff now requests the Commission to: (1) open a complaint case pursuant to Section 386.390 RSMo; and, after hearing, find that Gates Communications, Inc. failed, omitted, or neglected to file its 2005 Annual Report; (2) authorize its General Counsel to bring a penalty action against the Company in the circuit court as provided in Section 386.600 RSMo based on the statutory penalties set forth in Section 392.210.1 RSMo.

Respectfully submitted,

/s/ Jennifer Heintz

Jennifer Heintz  
Assistant General Counsel  
Missouri Bar No. 57128

Attorney for the Staff of the  
Missouri Public Service Commission  
PO Box 360  
Jefferson City, MO 65102  
(573) 751-8701 (Telephone)  
(573) 751-9285 (Fax)  
[jennifer.heintz@psc.mo.gov](mailto:jennifer.heintz@psc.mo.gov)

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to the following this 26th day of July 2006.

/s/ Jennifer Heintz

Gates Communications, Inc.  
1100 Olive Way  
Suite 951  
Seattle, WA 98101

TCS Corporate Services, Inc.  
Registered Agent for Gates Communications, Inc.  
222 E. Dunklin  
Suite 102  
Jefferson City, MO 65101

Lewis Mills, Esq.  
Office of the Public Counsel  
PO Box 7800  
Jefferson City, MO 65102

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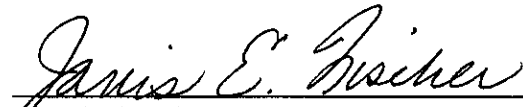
**AFFIDAVIT OF JANIS E. FISCHER**

**STATE OF MISSOURI**

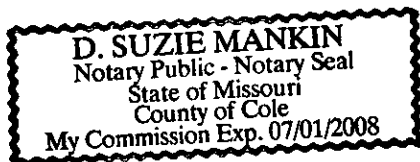
**COUNTY OF COLE**

ss.

I, Janis E. Fischer, Utility Regulatory Auditor IV, of the Commission's Auditing Department, first being duly sworn on my oath state that the Public Service Commission's records do not reflect the receipt of the 2005 Annual Report from Gates Communications, Inc.

  
Janis E. Fischer

Subscribed and sworn to before me this 25<sup>th</sup> day of July 2006.



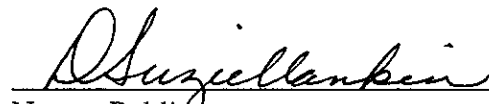
  
Notary Public

EXHIBIT A