

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

Staff of the Public Service Commission of the State)	
of Missouri,)	
)	
Complainant,)	
v.)	Case No. TC-2007-0342
)	
Davidson Telecom, L.L.C.,)	
)	
Respondent.)	

AMENDED COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (Staff), pursuant to section 386.390.1 RSMo (2000) and Commission Rule 4 CSR 240-2.070 and for its first amended complaint against Davidson Telecom, L.L.C., (Davidson), states:

Introduction

1. This Amended Complaint concerns violations of a Commission rule requiring Quality of Service Reports to be filed quarterly by companies providing basic local telecommunications service. This Complaint also concerns violations of a Commission rule setting out certain information that must be included in a company's annual report.

Complainant

2. Complainant is the Staff of the Missouri Public Service Commission (Staff), acting through the Commission's General Counsel as authorized by Commission Rule 4 C.S.R. 240-2.070(1). A "Complaint may be made. . .in writing, setting forth any act or thing done or omitted to be done by any corporation. . .in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission. . . ." Section 386.390.1 RSMo (2000).

Respondent

3. Davidson is a telecommunications company certificated in Missouri by the Missouri Public Service Commission to provide basic local telecommunications service (Case No. CA-2003-0308), and is a telecommunications company as defined by section 386.020(51) RSMo (2000) (Supp. 2005).

4. Davidson's business address is P.O. Box 2342, Davidson, North Carolina, 28036.

5. The registered agent in Missouri for Davidson is CSC-Lawyers Incorporating Service Company, 221 Bolivar Street, Jefferson City, Missouri, 65101.

Count I

Failure to File Quarterly Quality of Service Reports

6. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 5, above.

7. Davidson is offering and providing basic local exchange telecommunications service in Missouri, in the exchanges served by Southwestern Bell, LP d/b/a AT&T Missouri (AT&T), Embarq Missouri, Inc. (Embarq), Spectra Communications Group, Inc. (Spectra), and CenturyTel of Missouri, LLC (CenturyTel).

8. Commission Rule 4 C.S.R. 240-3.550(5), requires that each company which provides basic local telecommunications service "file with the commission no later than forty-five days following the end of each quarter a report, referred to as the quarterly report [or Quarterly Quality of Service Report], of the quality of the telephone service provided to its customers."

9. Davidson has not filed Quarterly Quality of Service Reports in compliance with 4 C.S.R. 240-3.550(5).

10. After numerous conversations attempting to bring Davidson into compliance with reporting requirements, undersigned counsel sent a letter dated March 5, 2007, demanding that Davidson submit their Quarterly Quality of Service Reports in compliance with 4 C.S.R. 240-3.550(5) by close of business on March 19, 2007. To this date, Davidson has not responded.

WHEREFORE, the Staff requests that the Commission find that Davidson Telecom, L.L.C., has failed to file Quarterly Quality of Service Reports pursuant to Commission Rule 4 C.S.R. 240-3.550(5) for every quarter applicable.

Count II

Failure to Follow Commission Rule for Information to be included in Annual Report

11. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 10, above.

12. Davidson submitted its 2005 Competitive Local Exchange Carrier (CLEC) Annual Report on June 12, 2006.

13. Davidson was notified by email of certain deficiencies in their CLEC Annual Report on June 15, 2006.

14. Commission Rule 4 C.S.R. 240-3.540(3) requires that when a company, such as Davidson, receives a notice from the commission citing deficiencies in the information provided in the company's annual report, the company shall have twenty (20) days to respond, and that the information requested shall be included in the response.

15. Davidson has not filed a response to the notice of deficiency in compliance with 4 C.S.R. 240-3.540(3).

WHEREFORE, the Staff requests that the Commission find that Davidson Telecom, L.L.C., has failed to file a response to the commission's notice of deficiency pursuant to Commission Rule 4 C.S.R. 240-3.540(3).

Count III

Authorization to Seek Penalties in Circuit Court

16. Complainant hereby adopts by reference and re-alleges the allegations set forth in Paragraphs 1 through 15, above.

17. 4 C.S.R. 240-3.540(9) provides:

A telecommunications company that does not timely file its annual report, or its response to a notice that its annual report is deficient, is subject to a penalty of one hundred (\$100) dollars for each day that it is late in filing its annual report or its response to a notice of deficiency.

18. Section 386.570(1) RSMo (2000) provides:

Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

19. Section 386.570(2) RSMo (2000) provides:

Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

20. Section 386.600 RSMo (2000) provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order

or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

21. The Missouri courts have imposed a duty upon the Public Service Commission to first determine matters within its jurisdiction before proceeding to those courts. As a result, “[t]he courts have ruled that the [Commission] cannot act only on the information of its staff to authorize the filing of a penalty action in circuit court; it can authorize a penalty action only after a contested hearing.” *State ex rel Sure-way Transp., Inc. v. Division of Transp., Dept. of Economic Development, State of Mo.*, 836 S.W.2d 23, 27 (Mo.App. W.D. 1992).

WHEREFORE, Staff requests that the Commission authorize the General Counsel of the Commission to bring an action in Circuit Court to recover from Davidson Telecom, L.L.C., the maximum statutory forfeiture allowed by 4 C.S.R. 240-3.540(9), and section 386.570, for each separate, distinct, and continuing violation.

Summary of Relief Sought

WHEREFORE, Staff requests that the Commission:

- a) find that Davidson Telecom, L.L.C., has failed to file Quarterly Quality of Service Reports pursuant to Commission Rule 4 C.S.R. 240-3.550(5) for every quarter applicable,
- b) find that Davidson Telecom, L.L.C., has failed to file a response to the commission’s notice of deficiency in compliance with 4 C.S.R. 240-3.540(3), and
- c) authorize the General Counsel of the Commission to bring an action in Circuit Court to recover from Davidson Telecom, L.L.C., the maximum statutory forfeiture allowed by 4 C.S.R. 240-3.540(9) and Section 386.570 for each separate, distinct, and continuing violation.

Respectfully submitted,

/s/ Jennifer Heintz
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