

MISSOURI SERVICE COMMISSION
P.O. BOX 360
JEFFERSON CITY MO 65102



7002 0460 0003 0704 7338



RETURN TO SENDER

FILED

FEB 18 2004

Missouri Public
Service Commission

CERT

Arrival Communications Inc.
1230 42nd Ave.
San Francisco, CA 94122

IN COLLECT ADDRESS

TC-04-0334 2/4/04

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Arrival Communications Inc.
1230 42nd Ave.
San Francisco, CA 94122

2. Article Number
(Transfer from service label)

7002 0460 0003 0704 7338

Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

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

The Staff of the Missouri Public Service
Commission,

Complainant,

v.

Arrival Communications, Inc.,

Respondent.

Case No. TC-2004-0334

NOTICE OF COMPLAINT

Arrival Communications, Inc.
1807 19th Street
Bakersfield, California 93301
CERTIFIED MAIL

Arrival Communications, Inc.
c/o CSC Lawyers Inc. Service Co., Registered Agent
221 Bolivar Street
Jefferson City, Missouri 65101
CERTIFIED MAIL

Arrival Communications, Inc.
1230 42nd Avenue
San Francisco, California 94122
CERTIFIED MAIL

On February 3, 2004, the Staff of the Missouri Public Service Commission filed a complaint with the Commission against Arrival Communications, Inc., a copy of which is enclosed. Pursuant to 4 CSR 240-2.070, the Respondent shall have 30 days from the date of this notice to file an answer or to file notice that the complaint has been satisfied.

In the alternative, the Respondent may file a written request that the complaint be referred to a neutral third-party mediator for **voluntary mediation** of the complaint. Upon receipt of a request for mediation, the 30-day time period shall be tolled while the Commission ascertains whether or not the Complainant is also willing to submit to voluntary mediation. If the Complainant agrees to mediation, the time period within which an answer is due shall be suspended pending the resolution of the mediation process. Additional information regarding the mediation process is enclosed.

If the Complainant declines the opportunity to seek mediation, the Respondent will be notified in writing that the tolling has ceased and will also be notified of the date by

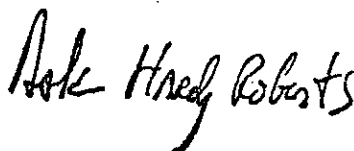
which an answer or notice of satisfaction must be filed. That period will usually be the remainder of the original 30-day period.

All pleadings (the answer, the notice of satisfaction of complaint or request for mediation) shall be mailed to:

Secretary of the Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102-0360

A copy shall be served upon the Complainant at the Complainant's address as listed within the enclosed complaint. A copy of this notice has been provided to the Complainant.

BY THE COMMISSION



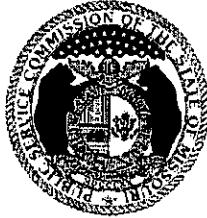
Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Dated at Jefferson City, Missouri,
on this 4th day of February, 2004.

Thompson, Deputy Chief Regulatory Law Judge

Copy to: David A. Meyer
Associate General Counsel
Missouri Public Service Commission
Post Office Box 360
Jefferson City, Missouri 65102



Commissioners

STEVE GAW
Chair

CONNIE MURRAY

ROBERT M. CLAYTON III

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

ROBERT J. QUINN, JR.
Executive Director

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. PRENGER
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Information Sheet Regarding Mediation of Commission Formal Complaint Cases

Mediation is a process whereby the parties themselves work to resolve their dispute with the aid of a neutral third-party mediator. This process is sometimes referred to as "facilitated negotiation." The mediator's role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who "wins." Instead, the mediator simply works with both parties to facilitate communications and to attempt to enable the parties to reach an agreement which is mutually agreeable to both the complainant and the respondent.

The mediation process is explicitly a problem-solving one in which neither the parties nor the mediator are bound by the usual constraints such as the rules of evidence or the other formal procedures required in hearings before the Missouri Public Service Commission. Although many private mediators charge as much as \$250 per hour, the University of Missouri-Columbia School of Law has agreed to provide this service to parties who have formal complaints pending before the Public Service Commission at no charge. Not only is the service provided free of charge, but mediation is also less expensive than the formal complaint process because the assistance of an attorney is not necessary for mediation. In fact, the parties are encouraged not to bring an attorney to the mediation meeting.

The formal complaint process before the Commission invariably results in a determination by which there is a "winner" and a "loser" although the value of winning may well be offset by the cost of attorneys fees and the delays of protracted litigation. Mediation is not only a much quicker process but it also offers the unique opportunity for informal, direct communication between the two parties to the complaint and mediation is far more likely to result in a settlement which, because it was mutually agreed to, pleases both parties. This is traditionally referred to as "win-win" agreement.

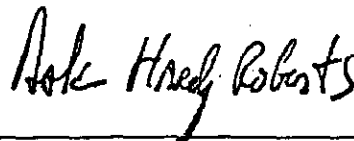
The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating one participant's perspective or proposal into a form that is more understandable and acceptable to the other participant, (8) assist the participants with the actual negotiation process, (9) occasionally a mediator may propose a possible solution, and (10) on rare occasions a mediator may encourage a participant to accept a particular solution. The mediator will not possess any specialized knowledge of the utility industry or of utility law.

In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must send a representative who has full authority to settle the complaint case. The essence of mediation stems from the fact that the participants are both genuinely interested in resolving the complaint.

Because mediation thrives in an atmosphere of free and open discussion, all settlement offers and other information which is revealed during mediation is shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information. The only information which must be disclosed to the Public Service Commission is (a) whether the case has been settled and (b) whether, irrespective of the outcome, the mediation effort was considered to be a worthwhile endeavor. The Commission will not ask what took place during the mediation.

If the dispute is settled at the mediation, the Commission will require a signed release from the complainant in order for the Commission to dismiss the formal complaint case.

If the dispute is not resolved through the mediation process, neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.



Dale Hardy Roberts
Secretary of the Commission

Date: February 4, 2004.

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

The Staff of the Missouri Public Service
Commission,)

Complainant,)

v.)

Arrival Communications, Inc.)

Respondent.)

Case No. TC-2004-_____

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and initiates its complaint pursuant to Section 386.390 and 4 CSR 240-2.070, against Arrival Communications, Inc. (the "Company") for violation of the Commission's statutes and rules relating to annual report filings and annual assessment payments. In support of its complaint, Staff respectfully states as follows:

GENERAL ALLEGATIONS

1. Respondent Arrival Communications, Inc. is a "telecommunications company" and "public utility" as defined in Section 386.020 RSMo (2000) and is subject to the jurisdiction of the Missouri Public Service Commission pursuant to Section 386.250. Arrival Communications, Inc. has provided the following contact information to the Commission:

Arrival Communications, Inc.
1807 19th Street
Bakersfield, CA 93301

According to the Office of the Secretary of State of Missouri, the Company was administratively dissolved on September 4, 2002. Arrival Communications, Inc.'s business address provided to the Secretary of State is:

Arrival Communications, Inc.
1230 42nd Avenue
San Francisco, CA 94122

And the Company's registered agent with the Missouri Secretary of State's Office is:

CSC Lawyers Inc Service Co.
221 Bolivar Street
Jefferson City, MO 65101

2. Section 386.390.1 authorizes the Commission to entertain a complaint "setting forth any act or thing done or omitted to be done by a public utility in violation of any law, or of any rule, order or decision" of the Commission.

3. Commission practice Rule 4 CSR 240-2.070(1) provides that the Commission's Staff, through the General Counsel, may file a complaint.

4. 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 Division 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) (relying on *State v. Carroll*, 620 S.W.2d 22 (Mo. App. 1981)); see also *State ex rel. Cirese v. Ridge*, 138 S.W.2d 1012 (Mo.banc 1940). 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 the circuit court as provided in Section 386.600.

5. Section 392.210.1 states that telecommunications companies must "file an annual report with the Commission at a time and covering the yearly period fixed by the commission."

COUNT ONE

6. Commission Rule 4 CSR 240-3.540(1) requires all telecommunications companies to file their annual reports on or before April 15 of each year.

7. On February 3, 2003, the Executive Director of the Commission sent all regulated utilities, including Arrival Communications, Inc., a letter notifying them of the requirement to file an annual report covering the calendar year 2002, together with the appropriate form for the Company to complete and return to the Commission and instructions on how the Company may complete its filing electronically. The letter was sent to the address that was current in the Commission's Electronic Filing and Information System ("EFIS") at that time, and the letter was not returned.

8. The Company never returned a completed form, nor did it file its annual report electronically; and as of the date of this pleading, has not filed its 2002 Annual Report. See Affidavit of Janis Fischer, attached to this Complaint as Exhibit A.

9. Section 392.210.1 provides that "[i]f any telecommunications company shall fail to make and file its annual report as and when required or within such extended time as the commission may allow, such company shall forfeit to the state the sum of one hundred dollars for each and every day it shall continue to be in default with respect to such report..."

COUNT TWO

12. Section 386.370 authorizes the Commission to determine the amount of an annual assessment for expenses of the Commission to be collected from public utilities operating in this state. This statute provides that the public utility shall pay the amount assessed by July 15 or may at its election pay the assessment in four equal installments not later than July 15, October 15, January 15 and April 15.

13. Pursuant to Section 386.370, the Commission promulgated its *Assessment Order for Fiscal Year 2004* in Case No. AO-2003-0573, "In the Matter of the Assessment Against the Public Utilities in the State of Missouri for the Expenses of the Commission for the Fiscal Year Commencing July 1, 2003."

14. As called for by the *Assessment Order* in Case No. AO-2003-0573, the Budget and Fiscal Services Department calculated the amount of the 2004 Fiscal Year annual assessment for the Company and the Commission's Director of Administration rendered the statement of its assessment on behalf of the Commission by letter on June 27, 2003.

15. Also in the *Assessment Order*, the Commission directed "[t]hat each public utility shall pay its assessment as set forth herein."

16. If the Company elected to pay on a quarterly basis, quarterly installments were due on July 15, 2003; October 15, 2003; and January 15, 2004. Thus, the Company is delinquent on at least the first three-quarters of its 2004 annual assessment.

17. On October 29, 2003, the Executive Director of the Commission sent a letter to to an address that the Company had provided and that was contained in the EFIS system, informing the Company of its unpaid assessment for Fiscal Year 2004.

18. The Company, as of the date of this pleading, has not paid its Fiscal Year 2004 assessment and therefore has not complied with the Commission's *Assessment Order*. See Affidavit of Dan Redel, attached to this Complaint as Exhibit B.

19. Any public utility that fails, omits, or neglects to obey an order of the Commission "is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars" for each offense, if there is no penalty otherwise provided. Section 386.570.1. No penalty for failing to pay annual assessments is set forth in the Commission's statutes.

20. As part of the Commission *Order* in this case, the Staff requests that the Commission formally find that it may publicly release the amount of the overdue assessment. As the assessment is derived from statements of revenue provided by regulated utilities and thus subject to the provisions of Section 386.480 ("No information furnished to the commission by a ... public utility ... shall be open to public inspection or made public except on order of the commission ..."), Staff is concerned that in the absence of a Commission order directing its release, the revelation of the assessment amounts in circuit court or elsewhere may be improper.

COUNT THREE

21. The Commission has the authority to cancel a certificate of service authority if not against the wishes of the certificate holder. *State ex rel. City of Sikeston v. Public Serv. Comm'n*, 82 S.W.2d 105, 109 (Mo. 1935). Thus, the Commission has the authority to cancel a telecommunications company certificate pursuant to Section 392.410.5, which provides that "[a]ny certificate of service authority may be altered or modified by the commission after notice and hearing, upon its own motion or upon application of the person or company affected." However, the Commission need not hold a hearing, if, after proper notice and opportunity to

intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494 (Mo.App. W.D. 1989).

22. If the Company fails to respond to this Complaint in a timely manner as required by 4 CSR 240-2.070(8), Staff requests that the Commission find that the Company's default constitutes its consent for the Commission to cancel its certificate and tariff. Therefore, Staff requests the Commission to cancel the certificate of service authority granted on April 3, 2000 in Case No. TA-2000-505 to Arrival Communications, Inc. to provide intrastate interexchange telecommunications services and local exchange telecommunications services in the state of Missouri limited to providing dedicated, non-switched local exchange private line services; as well as the accompanying tariff, PSC Mo. Tariff No. 1.

WHEREFORE, Staff now requests that the Commission open a complaint case pursuant to Section 386.390; and, after hearing, find that Arrival Communications, Inc. failed, omitted, or neglected to file its 2002 Annual Report and pay its Fiscal Year 2004 annual assessment to the Commission as required by Missouri statute and Commission orders; authorize its General Counsel to bring a penalty action against the Company in the circuit court as provided in Section 386.600, based on the statutory penalties set forth in Sections 392.210.1 (for failing to file annual reports) and 386.570 and 386.590 (for failing to pay assessments); and order that the amount of the overdue assessment may be publicly released.

Moreover, if the Company fails to respond to this Complaint in a timely manner as required by 4 CSR 240-2.070(8), in addition to a finding in default under 4 CSR 240-2.070(9), Staff requests that the Commission find that the Company's default constitutes its consent for the Commission to cancel its certificate and tariff, and therefore cancel the certificate of service

authority of Arrival Communications, Inc. granted in Case No. TA-2000-505 and its tariff, PSC
Mo. Tariff No. 1.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ David A. Meyer

David A. Meyer
Associate General Counsel
Missouri Bar No. 46620

Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-8706 (Telephone)
(573) 751-9285 (Fax)
david.meyer@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 3rd day of February 2004.

/s/ David A. Meyer

Arrival Communications, Inc.
1807 19th Street
Bakersfield, CA 93301

Arrival Communications, Inc.
1230 42nd Avenue
San Francisco, CA 94122

CSC Lawyers Inc Service Co.
Registered Agent for Arrival Communications, Inc.
221 Bolivar Street
Jefferson City, MO 65101

John Coffman, Esq.
Office of the Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

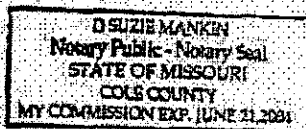
AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF COLE)

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 2002 Annual Report from Arrival Communications, Inc.

Janis E. Fischer
Janis E. Fischer

Subscribed and sworn to before me this 2nd day of February, 2004.



D. Suzie Manken
NOTARY PUBLIC

Exhibit A

AFFIDAVIT

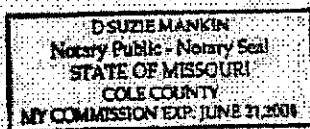
STATE OF MISSOURI)
)
COUNTY OF COLE)

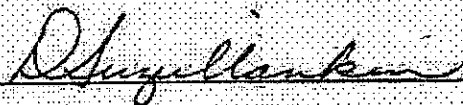
I, Dan Redel, Fiscal and Administrative Manager, in the Commission's Budget and Fiscal Services Department, first being duly sworn on my oath state that the Public Service Commission's records do not reflect the receipt of the Fiscal Year 2004 annual assessment from Arrival Communications, Inc.



Dan Redel

Subscribed and sworn to before me this 3rd day of February, 2004.





NOTARY PUBLIC

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 4th day of Feb. 2004 .



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge