

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

The Staff of the Missouri Public Service Commission,)
)
)
Complainant,)
)
v.)
)
Nettronix, 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 Nettronix, Inc. (the "Company") for violation of the Commission's statutes and rules relating to annual report filings. In support of its complaint, Staff respectfully states as follows:

GENERAL ALLEGATIONS

1. Respondent Nettronix, 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. The Commission granted the Company a certificate of service authority to provide interexchange telecommunications services in Case No. TA-98-491 on July 16, 1998. Nettronix, Inc. has provided the following contact information to the Commission:

Nettronix, Inc.
2825 East Cottonwood Parkway South, Ste. 500
Salt Lake City, UT 84121

Nettronix, Inc.'s registered agent, according to the records of the Missouri Secretary of State's Office, is:

Nettronix, Inc.
c/o National Registered Agents, Inc.
300-B East High Street
Jefferson City, MO 65101

2. According to the Office of the Secretary of State of Missouri official web site, Nettronix, Inc. was administratively dissolved on September 28, 1998.

3. 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.

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

5. 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.

COUNT ONE

6. 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.”

7. 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.

8. On February 3, 2003, the Executive Director of the Commission sent all regulated utilities, including Nettronix, 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.

9. 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.

10. 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

11. 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).

12. 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, and therefore cancel the certificate of service authority of Nettronix, Inc. to provide interexchange telecommunications services and the accompanying tariff, Mo. PSC Tariff No. 1.

PRAYER FOR RELIEF

WHEREFORE, Staff now requests that the Commission open a complaint case pursuant to Section 386.390; and, after hearing, find that Nettronix, Inc. failed, omitted, or neglected to file its 2002 Annual Report as required by Missouri statute; and 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).

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 Nettronix, Inc. to provide interexchange telecommunications services and the accompanying tariff, Mo. PSC No. 1.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Robert S. Berlin

Robert S. Berlin
Assistant General Counsel
Missouri Bar No. 51709

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 10th day of February 2004.

/s/ Robert S. Berlin

Nettronix, Inc.
2825 East Cottonwood Parkway South, Ste. 500
Salt Lake City, UT 84121

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300-B East High Street
Jefferson City, MO 65101

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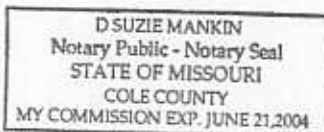
AFFIDAVIT

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 Nettronix, Inc.

Janis E. Fischer
Janis E. Fischer

Subscribed and sworn to before me this 10th day of February, 2004.



D. Suzie Mankin
NOTARY PUBLIC
