

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

The Staff of the Missouri Public Service Commission, )  
 )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 Ionex Communications, Inc. )  
 d/b/a Birch Communications )  
 )  
 Respondent. )

**Case No. TC-2019-0000**

**COMPLAINT**

**COMES NOW** the Staff of the Missouri Public Service Commission, through the undersigned counsel, and pursuant to Section 386.370 RSMo (2000)<sup>1</sup>, files this Complaint with the Missouri Public Service Commission against Ionex Communications, Inc., d/b/a Birch Communications (“Company”), for violation of the Commission’s statutes relating to the payment of annual assessments. In support of its Complaint, Staff respectfully states the following:

**Introduction**

1. This matter concerns Respondent’s failure to pay the Company’s annual Public Service Commission Assessment.

**Parties**

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Staff Counsel’s Office as authorized by Commission Rule 4 CSR 240-2.070(1).

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<sup>1</sup> All statutory references are to RSMo 2000, as currently supplemented.

3. Respondent Company is located at 320 Interstate North Pwky SE, Atlanta, GA, 30339. Respondent's official representative, as listed in EFIS, is Sharyl Fowler, 115 Gateway Dr., Macon, GA, 31210. The Company provides telecommunications services statewide.

4. Respondent CSC-Lawyers Incorporating Service Company on information and belief is the registered agent of Respondent Company.

### **General Allegations**

5. Respondent is a provider of "telecommunications services" to the public for gain as defined by § 386.020(54) and a "public utility" as defined by § 386.020(43), RSMo, and thus is subject to the jurisdiction of this Commission pursuant to § 386.250(3), RSMo.

6. Section 386.390.1, RSMo 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, or claimed to be in violation, of any provision of law, or of any rule, or order or decision of the commission."

7. Section 386.600, RSMo provides, "an action to recover a penalty 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."

### **Respondent failed to pay Company's fiscal year 2019 assessment**

8. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 7, above.

9. Section 386.370.2 RSMo, states:

The Commission shall allocate to each group of public utilities the gross intrastate operating revenues of such group during the preceding calendar year. The Commission shall then assess the amount allocated to each public utility in proportion to their respective gross intrastate operating revenues during the preceding calendar year.

10. On June 20, 2018, the Commission, in Case No. AO-2018-0379, issued its Assessment Order for Fiscal Year 2019 (2019 Assessment Order) pursuant to § 386.370 RSMo. The Assessment Order fixed the amount allocated to telephone service providers at \$1,304,107.

11. Section 408.020 RSMo allows "creditors to receive interest at the rate of nine percent per annum, when no other rate is agreed upon on accounts after they become due and demand of payment is made[,] and Complainant is statutorily entitled to prejudgment interest on Company's delinquent assessment amount.

12. On June 21, 2018, the Commission's Budget and Fiscal Services sent Respondent notice stating that \$1964.91 was due no later than July 15, 2018, to keep Company's account in good standing.

13. On August 15, 2018, the Commission sent Respondent a "late notice" by email, stating that \$1964.91 was due immediately to keep Company's account in good standing.

14. As of the date of this filing, Respondent has failed, omitted, or neglected to pay \$1964.91 of Company's total fiscal year 2019 assessment.

15. Section 386.570.1 RSMo provides that,

Any public utility which violates or fails to comply with any law, or which fails to 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 public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

16. Section 386.570.2, RSMo, provides that “in case of a continuing violation each day’s continuance thereof shall be and be deemed to be a separate and distinct offense.”

**WHEREFORE**, the Staff respectfully requests the Commission give notice to the Respondent as required by law and, after the opportunity for hearing, issue an order that finds the Respondent has failed to pay the fiscal year 2019 assessment and authorizes the General Counsel’s Office to bring a penalty action against the Respondent in circuit court as provided in §§ 386.600, 386.370, and 386.570, RSMo., for the collection of the assessment, penalties, and interest on the assessment amount.

Respectfully submitted,

**/s/ Travis J. Pringle**  
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**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing were mailed, electronically mailed, or hand-delivered to all counsel of record this 13<sup>th</sup> day of November, 2018.

**/s/ Travis J. Pringle**