

Missouri Public Service Commission

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**Missouri Public
Service Commission**

Airnex Communications, Inc.
Legal Department
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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office in
Jefferson City on the 31st day of
July, 2019.

The Staff of the Missouri Public
Service Commission,

Complainant,

v.

Air Nex Communications, Inc.,

Respondent.

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File No.: TC-2019-0281

**ORDER GRANTING STAFF'S MOTION FOR
DEFAULT JUDGMENT AND AUTHORITY TO SEEK PENALTIES**

Issue Date: July 31, 2019

Effective Date: August 30, 2019

INTRODUCTION

Default

1. On March 21, 2019,¹ the Staff of the Missouri Public Service Commission ("Staff") filed a Complaint against Respondent, Air Nex Communications, Inc. (the "Company"), for failing to file a 2017 Annual Report. On March 22, the Missouri Public Service Commission ("Commission") issued its Notice of Contested Case and Order Directing Filing, ordering the Company to file an answer to the Complaint no later than April 21, 2019. On July 19, Staff filed a Motion for Default Judgment and Authority to Seek Penalties ("Motion for Default"). Staff's Motion for Default states that the Company has filed no answer in this matter.

¹ All date references will be to 2019 unless otherwise stated.

2. Commission Rule 4 CSR 240-2.070(9) provides: "The respondent shall file an answer to the complaint within the time provided. All grounds of defense, both of law and of fact shall be raised in the answer." Commission Rule 4 CSR 240-2.070(10), states:

"If the respondent in a complaint case fails to file a timely answer, the complainant's averments may be deemed admitted and an order granting default entered. The respondent has seven (7) days from the issue date of the order granting default to file a motion to set aside the order of default and extend the filing date of the answer. The commission may grant the motion to set aside the order of default and grant the respondent additional time to answer if it finds good cause."

3. The Respondent was served on March 25. The Company has filed no answer to the Complaint. Therefore, the Commission will grant Staff's Motion for Default, deem all the Complaint's allegations admitted, and make further findings as follows.

Subject Matter Jurisdiction

4. 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."

5. Section 386.600, RSMo provides:

"[A]n 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."

Cause of Action **Annual Reports**

6. A company that provides "telecommunications services" to the public for gain as defined by Section 386.020(54), RSMo, is a "public utility" as defined by Section 386.020 (43), RSMo.

7. Section 392.210 (1), RSMo requires every telecommunications company to file an annual report.

8. Commission Rule 4 CSR 240-28.012 (1)(A) provides in pertinent part:

Any company registered to provide IVolP service or with a certificate of service authority to provide nonswitched local, basic local, or interexchange telecommunications service shall file an annual report.

9. Commission Rule 4 CSR 240-28.012(1)(C) states that the deadline for a company to submit a completed annual report is April 15.

FINDINGS OF FACT

10. Respondent is a company that provides "telecommunications services" to the public for gain as defined by Section 386.020(54), RSMo, and is a "public utility" as defined by Section 386.020 (43), RSMo.

11. The Company's 2017 Annual Report was due on April 15, 2018. The Company neither filed the required report nor requested an extension of the due date.

CONCLUSIONS OF LAW

12. As a company that provides "telecommunications services to the public" per Section 386.020(54), RSMo, and a "public utility" per Section 386.020(43), RSMO, the Company is subject to the jurisdiction of the Commission pursuant to Section 386.250 (2), RSMo.

13. As a "telecommunications company," the Company is subject to the annual reports requirements of Section 392.210(1), RSMo, Commission Rule 4 CSR 240-28.012 (1)(A), and Commission Rule 4 CSR 240-28.012(1)(C).

14. The Company's failure to file its 2017 Annual Report is a violation of Section 392.210(1), RSMo and Commission Rule 4 CSR 240-28.012(1)(A) and (C).

15. The Company has been in violation of Section 392.210(1), RSMo and Commission Rule 4 CSR 240-28.012(1)(A) and (C), continuously each and every day from April 15, 2018, through the day of this Order.

DECISION

It is the decision of the Commission that the Company's failure to file its 2017 Annual Report places the Company in violation of Section 392.210(1), RSMo and Commission Rule 4 CSR 240-28.012(1)(A) and (C). It is the further decision of the Commission that the Company has been in violation of the statute and rules continuously every day from April 15, 2018, through the date of this Order. Section 386.600, RSMO, authorizes an action in any circuit court in this state in the name of the state of Missouri to recover a penalty or forfeiture or to enforce the powers of the Commission. Such an action will be prosecuted by the General Counsel of the Commission. The Commission will direct its Office of General Counsel to seek all such penalties, remedies and relief as may be allowed by law in the appropriate Circuit Court of Missouri.

The Company has seven days from the issue date of this order to file a motion to set aside this order of default.² Because this order has a thirty-day effective date of August 30, the Company has until August 29 to request rehearing.³

THE COMMISSION ORDERS THAT:

1. The Staff's Motion for Default Judgment and for Authority to Seek Penalties is granted.
2. The facts alleged in Staff's Complaint are deemed established.
3. A default judgment is issued against Air Nex Communications, Inc.

² Commission Rule 4 CSR 240-2.070(10)

³ Section 386.500, RSMo (2016).

4. The Commission's General Counsel is authorized to bring an action in the Circuit Court of its choosing seeking all penalties, remedies and relief against Air Nex Communications, Inc., as may be allowed by law.

5. This order shall be effective on August 30, 2019.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and
Coleman, CC., concur.

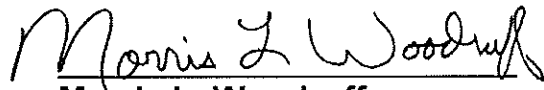
Graham, Regulatory Law Judge

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 31st day of July 2019.


Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

July 31, 2019

File/Case No. TC-2019-0281

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Commission**
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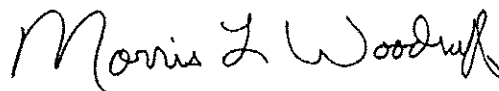
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Commission**
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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.