

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	<u>Case No. TC-2020-0XXX</u>
)	
Airnex Communications, Inc.,)	
)	
Respondent.)	

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission, through the undersigned counsel, and pursuant to § 386.370 RSMo, files this Complaint with the Missouri Public Service Commission against Respondent Airnex Communications, Inc. ("Company"). In support of its Complaint, Staff respectfully states the following:

Introduction

1. This matter concerns the failure of Airnex Communications, Inc. to timely file an Annual Report for 2018 as required by § 393.140(6), RSMo, and Commission Rule 4 CSR 240-28.012(1), and to pay the Company's annual Public Service Commission Assessment for FY 2019 as required by § 386.370.2.

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).

3. Respondent Company is located at 10246 Melbenji Ct., Elk Grove, CA, 95757. Respondent Company's official representative, per the Commission's Electronic

Filing and Information System (EFIS), is Arnold R. Marasigan, 121 W. Lexington Dr., Glendale, CA, 91203. Respondent Company provides intrastate interexchange telecommunications services statewide.

4. The Missouri Secretary of State on information and belief is the registered agent of Respondent Company.

5. Respondent Company currently has a case pending before the Commission, TC-2019-0281, for failure to file its 2017 Annual Report.

General Allegations

6. Respondent is a “telecommunications company” to the public for gain as defined by § 386.020(52), RSMo, and is thus 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.

7. 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.”

8. 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.”

Count I: Respondent Failed to File a 2018 Annual Report

9. Staff hereby re-alleges the allegations set out in Paragraph 1 through 8 as though the same were fully set out herein.

10. Section 393.140(6) RSMo, states:

Require every person and corporation under its supervision and it shall be the duty of every person and corporation to file with the commission an annual report, verified by the oath of the president, treasurer, general manager or receiver, if any, thereof. The verification shall be made by said official holding office at the time of the filing of said report, and if not made upon the knowledge of the person verifying the same, shall set forth the sources of his information and the grounds of his belief as to any matters not stated to be verified upon his knowledge. The report shall show in detail the amount of its authorized capital stock and the amount thereof issued and outstanding; the amount of its authorized bonded indebtedness and the amount of its bonds and other forms of evidence of indebtedness issued and outstanding; its receipts and expenditures during the preceding year; the amount paid as dividends upon its stock and as interest upon its bonds; the names of its officers and the aggregate amount paid as salaries to them and the amount paid as wages to its employees; the location of its plant or plants and system, with a full description of its property and franchises, stating in detail how each franchise stated to be owned was acquired; and such other facts pertaining to the operation and maintenance of the plant and system, and the affairs of such person or corporation as may be required by the commission. Such reports shall be in the form, cover the period and be filed at the time prescribed by the commission. The commission may, from time to time, make changes and additions in such forms. When any such report is defective or believed to be erroneous, the commission shall notify the person or corporation making such report to amend the same within a time prescribed by the commission. Any such person or corporation which shall neglect to make any such report or which shall fail to correct any such report within the time prescribed by the commission shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file or correct the same, to be sued for in the name of the state of Missouri. The amount recovered in any such action shall be paid to the public school fund of the state. The commission may extend the time prescribed for cause shown.

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

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

12. Respondent's 2018 Annual Report was due on April 15, 2019. Respondent neither filed the required report nor requested an extension of the due date.

13. Respondent is therefore in violation of § 393.140(6), RSMo and Commission Rule 4 CSR 240-28.012(1)(A).

WHEREFORE, 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 violated § 393.140(6), RSMo and Commission Rule 4 CSR 240-28.012(1)(A), as set out above, and thereupon authorize its General Counsel to seek in Circuit Court the penalties allowed by law; and grant such further relief as is just under the circumstances.

Count II: Respondent failed to pay Company's fiscal year 2019 assessment

14. Staff hereby re-alleges the allegations set out in Paragraph 1 through 8 as though the same were fully set out herein.

15. 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.

16. 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 Section 386.370 RSMo. The Assessment Order fixed the amount allocated to telephone service providers at \$1,304,107.

17. 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.

18. On June 21, 2018, the Commission's Budget and Fiscal Services sent Respondent notice stating that \$50.67 was due no later than July 15, 2018, to keep Company's account in good standing.

19. On August 15, 2018, the Commission sent Respondent a "late notice" by email, stating that \$50.67 was due immediately to keep Company's account in good standing.

20. On November 10, 2018, Respondent emailed Staff asking to pay the assessment online, or for an address to mail a check. Staff emailed payment information to Respondent on November 13, 2018.

21. As of the date of this filing, Respondent has failed, omitted, or neglected to pay \$50.67 of Company's total fiscal year 2019 assessment.

22. 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.

23. 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

Missouri Bar No. 71128

Legal Counsel

Attorney for the Staff of the
Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 751-4140 (Telephone)

(573) 751-9265 (Fax)

Travis.Pringle@psc.mo.gov

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 24th day of July, 2019.

/s/ Travis J. Pringle