

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

The Staff of the Missouri Public Service Commission,	)	
	)	
	)	Complainant
v.	)	
	)	File No. TC-2018-0315
PhoneHost, LLC,	)	
	)	
	)	Respondent.

## AMENDED NOTICE OF CONTESTED CASE AND ORDER DIRECTING FILING

Issue Date: May 22, 2018

Effective Date: May 22, 2018

The Commission's Staff filed Staff's First Amended Complaint, a copy of which is attached, with the original complaint. The filing of a complaint requires the Commission to set a hearing.<sup>1</sup> The requirement of a hearing on such issues signifies a contested case.<sup>2</sup> A contested case is a formal hearing procedure, but it allows for waiver of procedural formalities and a decision without an evidentiary hearing, including by stipulation and agreement.<sup>3</sup> The Commission's regulations provide for discovery at 4 CSR 240-2.090.

### THE COMMISSION ORDERS THAT:

1. PhoneHost, LLC shall file an answer to the complaint and amended complaint no later than June 21, 2018.

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<sup>1</sup> Section 392.240, RSMo 2016.

<sup>2</sup> Section 536.010(4), RSMo 2016.

<sup>3</sup> Section 536.060, RSMo 2016; 4 CSR 240-2.115.

2. The commission's data center shall serve a copy of this order and the complaint upon PhoneHost, LLC by certified mail, postage prepaid, at:

S&A Registered Agent, Inc.  
4240 Duncan Avenue  
St. Louis, MO 63110

3. This order shall be effective when issued.

**BY THE COMMISSION**



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Daniel Jordan, Senior Regulatory Law Judge,  
by delegation of authority pursuant  
to Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,  
on this 22<sup>nd</sup> day of May, 2018.

The Staff of the Missouri Public  
Service Commission,  
  
Complainant,  
  
v.  
  
PhoneHost, LLC,  
  
Respondents.

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**Case No. TC-2018-**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Complaint* in this matter hereby states:

1. This matter concerns the failure of the Respondents to secure proper certification to provide telecommunications services to customers in the area of Excelsior Springs, Missouri.<sup>1</sup>

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

<sup>1</sup> For the purposes of this pleading, “certification to provide telecommunications services” includes registration to provide interconnected voice over Internet protocol service.

1350 North Jesse James Road Excelsior Springs, Missouri, 64024. Its registered agent is Calan T. McConkey. Respondent PhoneHost, LLC, does not have a certificate of service authority from this Commission authorizing it to provide telecommunications services in the state of Missouri.

### **JURISDICTION**

4. On information and belief, the Respondent is engaged in the business of offering telecommunications services as defined in § 386.020(54), via telecommunications facilities that it owns, operates, or controls, within the state of Missouri. Therefore, pursuant to § 386.020(52), Respondent is a telecommunications company and, pursuant to § 386.020(43), a public utility subject to regulation by this Commission. Section 386.250(2).

5. Section 386.390.1, RSMo., authorizes the Commission to hear and determine complaints:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or 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 . . . .

6. The Commission has by rule authorized the Staff Counsel's Office to bring complaints on behalf of the Staff: "A complaint may also be filed by . . . the commission staff through the staff counsel . . . ."

### **Authority**

7. Section 386.570.1, RSMo., provides for a penalty between \$100.00 to \$2,000.00, per offense, for “[a]ny corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission . . . .” Each day that a continuing violation persists is counted as a separate offense. In the case of a corporate respondent, the acts and omissions of its officers, agents and employees are deemed to be the acts and omissions of the corporation. All penalties are cumulative.

8. Any company offering telecommunications service must be certificated or registered by the Commission prior to offering or selling telecommunications services. Section 392.440; 4 CSR 240-28.020(1). The procedure for a telecommunications utility to acquire a certificate of convenience and necessity is outlined in 4 CSR 240-28.030(4).

9. The Commission’s General Counsel can bring an action to seek penalties against a telecommunications services provider before a circuit court for any violation of the applicable statutes or Commission rules.

### **Background**

10. On April 5, 2018, Staff was informed by a customer of PowerComm Broadband, LLC, d/b/a New Dawn Fiber, which is the subject of a separate filing before this Commission, that he had not had phone service for four days. Staff has received notice that service has been restored as of the date of this filing.

11. Staff spoke to Kennis Mann, who identified himself as the owner of New Dawn Fiber, and who clarified that he purchases his customers' phone numbers/services through PhoneHost, LLC.

12. Staff searched its records and found no certificate of convenience and necessity for telecommunications services granted to PhoneHost, LLC.

13. Staff also has a complaint case pending against similarly-named PhoneHost Communications, LLC<sup>2</sup>, which it mistakenly came to believe was associated with PhoneHost, LLC. Staff asks the Commission to differentiate between these two entities, and to proceed with determinations in the complaints against each of these entities separately.

#### **REQUEST FOR RELIEF**

14. Staff now asks this Commission to issue an order requiring PhoneHost, LLC, to follow the Commission's procedure for obtaining a certificate of convenience and necessity pursuant to 4 CSR 240-28.030(4).

15. Staff also asks this Commission to order its General Counsel to seek penalties against PhoneHost, LLC, through an action before the circuit court for its violation of 4 CSR 240-28.020(1).

**WHEREFORE**, Staff prays that the Commission will issue an order against PhoneHost, LLC, to file an application for a certificate of convenience and necessity to offer telecommunications services in Missouri pursuant to 4 CSR 240-28.030(4); order its General Counsel to seek penalties against PhoneHost, LLC, for its violation of 4 CSR 240-28.020(1); and grant such other and further relief as the Commission considers just in the circumstances.

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<sup>2</sup> Case No. TC-2018-0282.

**/s/ Whitney Payne**

Whitney Payne  
Assistant Staff Counsel  
Missouri Bar No. 64078  
Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
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(573) 751-9285 (Fax)  
[whitney.payne@psc.mo.gov](mailto:whitney.payne@psc.mo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 2nd day of May, 2018, to all counsel of record.

**/s/Whitney Payne**

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

The Staff of the Missouri Public	)
Service Commission,	)
	)
Complainant,	)
	)
v.	)
	)
PhoneHost, LLC,	)
	)
Respondents.	)

**Case No. TC-2018-0315**

**STAFF’S FIRST AMENDED COMPLAINT**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *First Amended Complaint* in this matter hereby states:

1. Staff hereby adopts by reference and re-alleges Paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, as set out in its *Complaint* filed herein on May 2, 2018, and its Prayer for Relief as therein stated.

2. Staff hereby amends its Paragraph 3 as follows: “Respondent PhoneHost, LLC, is a Missouri limited liability company formed in 2018. It is in good standing. Its registered office is located at 4240 Duncan Ave., Ste. 200, St. Louis, MO 63110. Its registered agent is S&A Registered Agent, Inc. 4240 Duncan Ave., Ste. 200, St. Louis, MO 63110. Respondent PhoneHost, LLC, does not have a certificate of service authority from this Commission authorizing it to provide telecommunications services in the state of Missouri.”

**WHEREFORE**, Staff prays that the Commission will accept its *First Amended Complaint* and will serve Respondent and its Registered Agent, S&A Registered Agent,



Inc., at 4240 Duncan Ave., Ste. 200, St. Louis, MO 63110; and grant such other and further relief as the Commission considers just in the circumstances.

Respectfully submitted,

**/s/ Whitney Payne**

Whitney Payne  
Assistant Staff Counsel  
Missouri Bar No. 64078  
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)  
[whitney.payne@psc.mo.gov](mailto:whitney.payne@psc.mo.gov)

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 11th day of May, 2018, to all counsel of record.

**/s/Whitney Payne**

**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 22<sup>nd</sup> day of May 2018.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**May 22, 2018**

**File/Case No. TC-2018-0315**

**Missouri Public Service  
Commission**

Staff Counsel Department  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
staffcounselservice@psc.mo.gov

**Office of the Public Counsel**

Hampton Williams  
200 Madison Street, Suite 650  
P.O. Box 2230  
Jefferson City, MO 65102  
opcservice@ded.mo.gov

**Missouri Public Service  
Commission**

Whitney Payne  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
whitney.payne@psc.mo.gov

**PhoneHost, LLC**

Legal Department  
1350 N. Jesse James Rd  
Excelsior Springs, MO 64024

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

***Sincerely,***

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

**Morris L. Woodruff  
Secretary**

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