

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 18<sup>th</sup> day of June, 2009.

STAFF OF THE MISSOURI )  
PUBLIC SERVICE COMMISSION, )  
 )  
Complainant, )  
 )  
v. )  
 )  
PACIFIC CENTREX SERVICE, INC., )  
 )  
Respondent )

**File No. TC-2009-0377**

**ORDER AUTHORIZING ACTIONS IN CIRCUIT COURT**

Issue Date: June 18, 2009

Effective Date: June 28, 2009

The Missouri Public Service Commission is authorizing its General Counsel to seek enforcement, prejudgment interest, forfeiture, and penalties in Circuit Court against Pacific Centrex Service, Inc., ("Pacific Centrex") for failure to file an annual report and pay an annual assessment.

**Procedure**

On April 16, 2009, the Missouri Public Service Commission's staff ("Staff") filed the complaint. On April 22, 2009, the Commission served Pacific Centrex with notice of the complaint and an order to file an answer. The answer was due on May 20, 2009. As of the date of this order, Pacific Centrex has filed no answer.

On May 22, 2009, the Commission ordered Pacific Centrex to show cause why the Commission should not issue an order of default under the following provision:

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. [<sup>1</sup>]

As of the date of this order, Pacific Centrex has filed no response to that order.

Therefore, the Commission grants a default on the complaint and deems Pacific Centrex to admit the complaint's allegations as follows.

### **Findings of Fact**

1. Pacific Centrex holds a certificate of service authority to provide local telecommunications services, restricted to dedicated private line services, and interexchange telecommunications services in the State of Missouri.

#### **A. Report**

2. On January 15, 2008, the Commission's Budget and Fiscal Services Department sent to Pacific Centrex an electronic notice that outlined the annual report process and included a report form for 2007.

3. On May 27, 2008, the Commission's General Counsel sent a letter to Pacific Centrex stating that the Commission had not received Pacific Centrex's 2007 annual report.

4. On October 14, 2008, the General Counsel's Office sent another letter, allowing until October 24, 2008, to file the 2007 annual report.

5. Pacific Centrex has never filed its 2007 annual report.

#### **B. Assessment**

6. On June 24, 2008, the Commission issued its Assessment Order for Fiscal Year 2009 fixing the amount allocated to telephone public utilities at \$3,012,352.<sup>2</sup>

---

<sup>1</sup> 4 CSR 240.070(9), as authorized by §§ 386.410.1 and 536.067(2)(d). Sections are in the 2000 Revised Statutes of Missouri except as noted otherwise.

Pacific Centrex has never filed a statement of its gross revenues with the Commission for its calendar year 2007 intrastate operations. The Commission assessed Pacific Centrex \$596.72 for the fiscal year beginning July 1, 2008 ("assessment").

7. On June 25, 2008, the Commission's Executive Director notified Pacific Centrex by letter of the amount of Pacific Centrex's assessment, and that the due date for the assessment was July 15, 2008, or payable in quarterly installments on July 15, 2008, October 15, 2008, January 15, 2009, and April 15, 2009.

8. On September 8, 2008, the Commission's Budget and Fiscal Services sent Pacific Centrex notice stating that the Commission had received no payment on Pacific Centrex's assessment.

9. On November 6, 2008, the Commission's General Counsel sent Pacific Centrex a letter stating that if the Commission did not receive payment by December 6, 2008, the General Counsel's office would initiate legal action to collect the assessment and penalties.

10. Pacific Centrex has never paid the assessment.

### **Conclusions of Law**

Because Pacific Centrex is a "telecommunications company"<sup>3</sup> and "public utility"<sup>4</sup> subject to the Commission's jurisdiction,<sup>5</sup> the Commission has jurisdiction to hear Staff's complaint.<sup>6</sup> The complaint seeks authorization for an action under § 386.600:

An action to recover a penalty or a forfeiture 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

---

<sup>2</sup> Case No. AO-2008-0395.

<sup>3</sup> Section 386.020(52), RSMo Supp. 2008.

<sup>4</sup> Section 386.020(43), RSMo Supp. 2008.

<sup>5</sup> Section 386.250(2).

<sup>6</sup> Section 386.390.1 and 4 CSR 240-2 .070.

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.

Staff has the burden of proving that the Commission should authorize such action.<sup>7</sup>

### I. Report and Forfeiture

Staff cites the annual report obligation under 4 CSR 240-3 .540(1):

[A]ll telecommunications companies shall submit an annual report to the commission on or before April 15 of each year . . .

as authorized, with a forfeiture action to enforce it, under § 392.210.1:

Every telecommunications company shall file with the commission an annual report at a time and covering the yearly period fixed by the commission. . . . If any telecommunications company shall fail to make and file its annual report as and when required . . . , 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 or answer. Such forfeiture shall be recovered in an action brought by the commission in the name of the state of Missouri.<sup>8</sup>

Pacific Centrex's deemed admissions show a violation of those provisions, so the Commission concludes that Pacific Centrex is in default on its reporting requirement and is subject to forfeiture. To recover such forfeiture, Staff asks the Commission to authorize its General Counsel to bring an action in circuit court. The Commission will authorize such action.

### II. Assessment

Staff cites the annual assessment obligation under § 386.370.3:

[T]he **amount so assessed to each such public utility shall be paid by it** to the director of revenue in full on or before July fifteenth next following the rendition of such

---

<sup>7</sup> *Heidebur v. Parker*, 505 S.W.2d 440, 444 (Mo. App., St.L.D. 1974).

<sup>8</sup> Emphasis added.

statement, except that any such public utility may at its election pay such assessment in four equal installments not later than the following dates next following the rendition of said statement, to wit: July fifteenth, October fifteenth, January fifteenth and April fifteenth. The director of revenue shall remit such payments to the state treasurer. [<sup>9</sup>]

Staff has shown that Pacific Centrex did not file the statement required at § 386.370.5:

In order to enable the commission to make the allocations and assessments herein provided for, **each public utility** subject to the jurisdiction of the commission as aforesaid **shall file with the commission**, within ten days after August 28, 1996, and thereafter on or before March thirty-first of each year, **a statement** under oath showing its gross intrastate operating revenues for the preceding calendar year . . . [<sup>10</sup>]

and that Staff made the estimate allowed at § 386.370.5:

[I]f any public utility shall fail to file such statement within the time aforesaid **the commission shall estimate** such revenue which estimate shall be **binding** on such public utility for the purpose of this section. [<sup>11</sup>]

Therefore, Staff has shown that Pacific Centrex failed to pay its assessment.

*a. Enforcement*

On that basis, Staff seeks authorization for an action to enforce the assessment under § 386.600, and the Commission will authorize such action.

*b. Interest*

Staff also seeks authorization for an action for prejudgment interest on the assessment under § 408.020:

Creditors shall be allowed to receive interest at the rate of nine percent per annum, when no other rate is agreed upon, for all **moneys** after they become due and payable, on

---

<sup>9</sup> Emphasis added.

<sup>10</sup> Emphasis added.

<sup>11</sup> Emphasis added.

written contracts, and **on accounts** after they become due and demand of payment is made[.<sup>12]</sup>

No written contract is at issue, and assessments are not actions “on accounts.”

An action on account is an action at law, based in contract. An action on account “is appropriate where the parties have conducted a series of transactions for which a balance remains to be paid.” The plaintiff has the burden of making a submissible case by establishing proof of an offer, an acceptance, consideration, correctness of the account, and the reasonableness of the charges.[<sup>13]</sup>

But an account under § 408.020 means more than contract claims.

The “account” concept under the statute is not limited to traditional account scenarios. [A] quantum meruit claim [is] held to be an account under the statute [and a] claim on express oral contract held to be an account under the statute[.]

As used in section 408.020, “account” is regarded as equivalent to “claim” or “demand.” [<sup>14]</sup>

Further:

The purpose of statutory prejudgment interest is to promote settlement of lawsuits and fully compensate plaintiffs by accounting for the time-value of money.[<sup>15]</sup>

That discussion applies to the assessment. The assessment, as Pacific Centrex’ deemed admissions, has “become due and demand of payment is made” in the form of the several letters. Moreover, an award of prejudgment interest is not discretionary, it is

---

<sup>12</sup> Emphasis added.

<sup>13</sup> **Berlin v. Pickett**, 221 S.W.3d 406, 410-11 (Mo. App., W.D., 2006) (citations omitted).

<sup>14</sup> **A.G. Edwards & Sons, Inc. v. Drew**, 978 S.W.2d 386, 396-97 (Mo. App., E.D. 1998) (citations omitted).

<sup>15</sup> **Children Intern. v. Ammon Painting Co.**, 215 S.W.3d 194, 203 (Mo. App., W.D. 2006) (citations omitted).

compulsory.<sup>16</sup> Therefore, the Commission will authorize an action for prejudgment interest on the assessment under § 408.020.

*c. Penalty*

Staff further seeks authorization for an action to collect a penalty under § 386.570:

1. [A]ny....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.**

2. [I]n case of a continuing violation **each day's continuance thereof shall be** and be deemed to be a **separate and distinct offense**.[<sup>17</sup>]

The Commission will authorize such action.

**THE COMMISSION ORDERS THAT:**

1. Pacific Centrex Service, Inc., ("Pacific Centrex") is in default on the complaint because it filed no answer to the complaint.

2. Pacific Centrex is in default on its annual reporting requirement because it failed to file an annual report, in violation of § 392.210.1 and 4 CSR 240-3.540(1), so the Commission's General Counsel is authorized to bring a forfeiture action in circuit court under §§ 392.210.1 and 386.600.

3. Pacific Centrex has failed to pay an annual assessment in violation of § 386.370, so the Commission's General Counsel is authorized to bring an action for

---

<sup>16</sup> *Springfield Land And Development Co. v. Bass*, 48 S.W.3d 620, 633 (Mo. App., S.D. 2001).

enforcement and a penalty under §§ 386.570 and 386.600, RSMo 2000; and for prejudgment interest under § 408.020.

4. This order is effective on June 28, 2009.

5. This file may close on June 29, 2009.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Clayton, Chm., Davis, Jarrett,  
and Gunn, CC., concur.

Jordan, Regulatory Law Judge

---

<sup>17</sup> Emphasis added.