

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

The Staff of the	)	
Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
Nettronix, Inc.,	)	
	)	
Respondent.	)	

**Case No. TC-2004-0378**

**NOTICE OF COMPLAINT**

Nettronix, Inc.  
2825 East Cottonwood Parkway South, Ste. 500  
Salt Lake City, UT 84121  
**CERTIFIED MAIL**

Nettronix, Inc.  
c/o National Registered Agents, Inc.  
300-B East High Street  
Jefferson City, MO 65101  
**CERTIFIED MAIL**

On February 10, 2004, the Staff of the Missouri Public Service Commission filed a complaint with the Commission against Nettronix, Inc. A copy of the complaint is enclosed. Under Commission Rule 4 CSR 240-2.070, Nettronix has 30 days from the date of this notice to file an answer or to file notification that the complaint has been satisfied. Nettronix is reminded that, as a corporation, it cannot appear before the Commission unless it is represented by an attorney licensed to practice law in Missouri. Therefore, its answer must be signed by a Missouri attorney.

All pleadings must be mailed to:

Secretary of the Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102-0360

A copy must be served upon the Staff of the Commission at the address listed within the enclosed complaint.

**BY THE COMMISSION**

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

(S E A L)

Dated at Jefferson City, Missouri,  
on this 19th day of February, 2004.

Jones, Regulatory Law Judge

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

The Staff of the Missouri Public Service  
Commission,

Complainant,

v.

Nettronix, Inc.,

Respondent.

Case No. TC-2004-\_\_\_\_

**COMPLAINT**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and initiates its complaint pursuant to Section 386.390 and 4 CSR 240-2.070, against Nettronix, Inc. (the "Company") for violation of the Commission's statutes and rules relating to annual report filings. In support of its complaint, Staff respectfully states as follows:

**GENERAL ALLEGATIONS**

1. Respondent Nettronix, Inc. is a "telecommunications company" and "public utility" as defined in Section 386.020 RSMo (2000) and is subject to the jurisdiction of the Missouri Public Service Commission pursuant to Section 386.250. The Commission granted the Company a certificate of service authority to provide interexchange telecommunications services in Case No. TA-98-491 on July 16, 1998. Nettronix, Inc. has provided the following contact information to the Commission:

Nettronix, Inc.  
2825 East Cottonwood Parkway South, Ste. 500  
Salt Lake City, UT 84121

Nettronix, Inc.'s registered agent, according to the records of the Missouri Secretary of State's Office, is:

Nettronix, Inc.  
c/o National Registered Agents, Inc.  
300-B East High Street  
Jefferson City, MO 65101

2. According to the Office of the Secretary of State of Missouri official web site, Nettronix, Inc. was administratively dissolved on September 28, 1998.

3. Section 386.390.1 authorizes the Commission to entertain a complaint "setting forth any act or thing done or omitted to be done by a public utility in violation of any law, or of any rule, order or decision" of the Commission.

4. Commission practice Rule 4 CSR 240-2.070(1) provides that the Commission's Staff, through the General Counsel, may file a complaint.

5. The Missouri courts have imposed a duty upon the Public Service Commission to first determine matters within its jurisdiction before proceeding to those courts. As a result, "[t]he courts have ruled that the Division cannot act only on the information of its staff to authorize the filing of a penalty action in circuit court; it can authorize a penalty action only after a contested hearing." *State ex rel. Sure-Way Transp., Inc. v. Division of Transp., Dept. of Economic Development, State of Mo.*, 836 S.W.2d 23, 27 (Mo.App. W.D. 1992) (relying on *State v. Carroll*, 620 S.W.2d 22 (Mo. App. 1981)); see also *State ex rel. Cirese v. Ridge*, 138 S.W.2d 1012 (Mo.banc 1940). If the Commission determines after a contested hearing that the Company failed, omitted, or neglected to file its annual report and/or pay its annual assessment, the Commission may then authorize its General Counsel to bring a penalty action in the circuit court as provided in Section 386.600.

### COUNT ONE

6. Section 392.210.1 states that telecommunications companies must "file an annual report with the Commission at a time and covering the yearly period fixed by the commission."

7. Commission Rule 4 CSR 240-3.540(1) requires all telecommunications companies to file their annual reports on or before April 15 of each year.

8. On February 3, 2003, the Executive Director of the Commission sent all regulated utilities, including Nettromix, Inc., a letter notifying them of the requirement to file an annual report covering the calendar year 2002, together with the appropriate form for the Company to complete and return to the Commission and instructions on how the Company may complete its filing electronically. The letter was sent to the address that was current in the Commission's Electronic Filing and Information System ("EFIS") at that time, and the letter was not returned.

9. The Company never returned a completed form, nor did it file its annual report electronically; and as of the date of this pleading, has not filed its 2002 Annual Report. See Affidavit of Janis Fischer, attached to this Complaint as Exhibit A.

10. Section 392.210.1 provides that "[i]f any telecommunications company shall fail to make and file its annual report as and when required or within such extended time as the commission may allow, 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..."

### COUNT TWO

11. The Commission has the authority to cancel a certificate of service authority if not against the wishes of the certificate holder. *State ex rel. City of Sikeston v. Public Serv. Comm'n*, 82 S.W.2d 105, 109 (Mo. 1935). Thus, the Commission has the authority to cancel a telecommunications company certificate pursuant to Section 392.410.5, which provides that

"[a]ny certificate of service authority may be altered or modified by the commission after notice and hearing, upon its own motion or upon application of the person or company affected." However, the Commission need not hold a hearing, if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494 (Mo.App. W.D. 1989).

12. If the Company fails to respond to this Complaint in a timely manner as required by 4 CSR 240-2.070(8), Staff requests that the Commission find that the Company's default constitutes its consent for the Commission to cancel its certificate and tariff, and therefore cancel the certificate of service authority of Nettronix, Inc. to provide interexchange telecommunications services and the accompanying tariff, Mo. PSC Tariff No. 1.

#### PRAYER FOR RELIEF

WHEREFORE, Staff now requests that the Commission open a complaint case pursuant to Section 386.390; and, after hearing, find that Nettronix, Inc. failed, omitted, or neglected to file its 2002 Annual Report as required by Missouri statute; and authorize its General Counsel to bring a penalty action against the Company in the circuit court as provided in Section 386.600, based on the statutory penalties set forth in Sections 392.210.1 (for failing to file annual reports).

Moreover, if the Company fails to respond to this Complaint in a timely manner as required by 4 CSR 240-2.070(8), in addition to a finding in default under 4 CSR 240-2.070(9), Staff requests that the Commission find that the Company's default constitutes its consent for the Commission to cancel its certificate and tariff, and therefore cancel the certificate of service authority of Nettronix, Inc. to provide interexchange telecommunications services and the accompanying tariff, Mo. PSC No. 1.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

/s/ Robert S. Berlin

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Robert S. Berlin  
Assistant General Counsel  
Missouri Bar No. 51709

Attorney for the Staff of the  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 526-7779 (Telephone)  
(573) 751-9285 (Fax)  
[bob.berlin@psc.mo.gov](mailto:bob.berlin@psc.mo.gov)

### Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 10<sup>th</sup> day of February 2004.

/s/ Robert S. Berlin

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Nettronix, Inc.  
2825 East Cottonwood Parkway South, Ste. 500  
Salt Lake City, UT 84121

Nettronix, Inc.  
c/o National Registered Agents, Inc.  
300-B East High Street  
Jefferson City, MO 65101

John Coffman, Esq.  
Office of the Public Counsel  
P. O. Box 7800  
Jefferson City, MO 65102



**AFFIDAVIT**

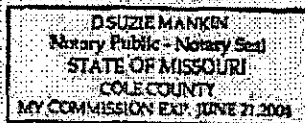
STATE OF MISSOURI )

COUNTY OF COLE )

I, Janis E. Fischer, Utility Regulatory Auditor IV, of the Commission's Auditing Department, first being duly sworn on my oath state that the Public Service Commission's records do not reflect the receipt of the 2002 Annual Report from Nettronix, Inc.

Janis E. Fischer  
Janis E. Fischer

Subscribed and sworn to before me this 10<sup>th</sup> day of February, 2004.



DSUZIE MANKIN  
NOTARY PUBLIC

Exhibit A



**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 19<sup>th</sup> day of Feb. 2004 .

*Dale Hardy Roberts*

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**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

**MISSOURI PUBLIC SERVICE COMMISSION**

**February 19, 2004**

**Case No. TC-2004-0378**

Dana K Joyce  
P.O. Box 360  
200 Madison Street, Suite 800  
Jefferson City, MO 65102

John B Coffman  
P.O. Box 7800  
200 Madison Street, Suite 640  
Jefferson City, MO 65102

National Registered Agents, Inc.  
Legal Department  
300-B East High Street  
Jefferson City, MO 65101

Nettronix, Inc.  
Legal Department  
2825 East Cottonwood Parkway  
South, Ste. 500  
Salt Lake City, UT 84121

**Enclosed find a certified copy of a NOTICE in the above-numbered case(s).**

**Sincerely,**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

RECEIVED<sup>2</sup>  
FEB 25 2004  
Records  
Public Service Commission

TC-2004-0378

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

National Registered Agents, Inc.  
Legal Department  
300-B East High Street  
Jefferson City, MO 65101

2. Article Number

(Transfer from service label)

7001 1940 0002 6942 5785

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

2/25/04

- D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

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☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

C SERVICE COMMISSION  
OX 360  
PERSON CITY MO 65102




7001 1940 0002 6942 5785



UNITED STATES  
PITNEY BOWES  
02 1A  
0004350512 FEB 19 2004  
\$ 04.65<sup>0</sup>  
MAILED FROM ZIP CODE 65101

 **REFUSED**

*Refused*

 **REFUSED**  
National Registered Agents, Inc.  
Legal Department  
300-B East High Street  
Jefferson City, MO 65101

1st NOTICE \_\_\_\_\_  
2nd NOTICE \_\_\_\_\_  
RETURNED \_\_\_\_\_