

PUBLIC SERVICE COMMISSION
P O BOX 360
JEFFERSON CITY MO 65102

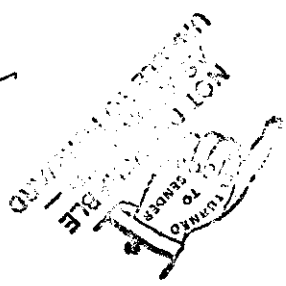
MO 419-1183 (12-97)

FILED


FEB 17 2004

Missouri Public
Service Commission

Handwritten signature and initials
JAN 2004
Bill



7099 3220 0009 3699 7388



Tri-State Telecommunications, Inc.,
D/B/A The Phone Company
1801 Central Ave., Suite F
Hot Springs, AR 71903



PLACE STICKER AT TOP OF MAILPIECE

TC-04-0337 2/5/64

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:

Tri-State Telecommunications, Inc.,
 D/B/A The Phone Company
 1801 Central Ave., Suite F
 Hot Springs, AR 71903

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number

(Transfer from service label)

7099 3220 0009 3699 7388

PS Form 3811, August 2001

Domestic Return Receipt

102596-02-M-1540

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
v.)	<u>Case No. TC-2004-0337</u>
)	
Tri-State Telecommunications, Inc., d/b/a The Phone Company,)	
)	
Respondent.)	

NOTICE OF COMPLAINT

Tri-State Telecommunications, Inc.,
d/b/a The Phone Company
1801 Central Avenue, Suite F
Hot Springs, Arkansas 71903
CERTIFIED MAIL

Tri-State Telecommunications, Inc.,
d/b/a The Phone Company
c/o Sondra Morgan, Registered Agent
312 East Capitol Avenue
Post Office Box 456
Jefferson City, Missouri 65102
CERTIFIED MAIL

On February 4, 2004, the Staff of the Missouri Public Service Commission filed a complaint with the Commission against Tri-State Telecommunications, Inc., d/b/a The Phone Company, a copy of which is enclosed. Pursuant to 4 CSR 240-2.070, the Respondent shall have 30 days from the date of this notice to file an answer or to file notice that the complaint has been satisfied.

In the alternative, the Respondent may file a written request that the complaint be referred to a neutral third-party mediator for **voluntary mediation** of the complaint. Upon receipt of a request for mediation, the 30-day time period shall be tolled while the Commission ascertains whether or not the Complainant is also willing to submit to voluntary mediation. If the Complainant agrees to mediation, the time period within which an answer is due shall be suspended pending the resolution of the mediation process. Additional information regarding the mediation process is enclosed.

If the Complainant declines the opportunity to seek mediation, the Respondent will be notified in writing that the tolling has ceased and will also be notified of the date by

which an answer or notice of satisfaction must be filed. That period will usually be the remainder of the original 30-day period.

All pleadings (the answer, the notice of satisfaction of complaint or request for mediation) shall be mailed to:

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

A copy shall be served upon the Complainant at the Complainant's address as listed within the enclosed complaint. A copy of this notice has been provided to the Complainant.

BY THE COMMISSION



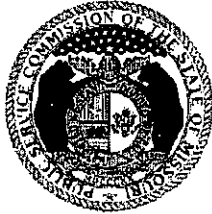
Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Dated at Jefferson City, Missouri,
on this 5th day of February, 2004.

Thompson, Deputy Chief Regulatory Law Judge

Copy to: David A. Meyer
Associate General Counsel
Missouri Public Service Commission
Post Office Box 360
Jefferson City, Missouri 65102



Commissioners

STEVE GAW
Chair

CONNIE MURRAY

ROBERT M. CLAYTON III

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

ROBERT J. QUINN, JR.
Executive Director

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. PRENGER
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Information Sheet Regarding Mediation of Commission Formal Complaint Cases

Mediation is a process whereby the parties themselves work to resolve their dispute with the aid of a neutral third-party mediator. This process is sometimes referred to as "facilitated negotiation." The mediator's role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who "wins." Instead, the mediator simply works with both parties to facilitate communications and to attempt to enable the parties to reach an agreement which is mutually agreeable to both the complainant and the respondent.

The mediation process is explicitly a problem-solving one in which neither the parties nor the mediator are bound by the usual constraints such as the rules of evidence or the other formal procedures required in hearings before the Missouri Public Service Commission. Although many private mediators charge as much as \$250 per hour, the University of Missouri-Columbia School of Law has agreed to provide this service to parties who have formal complaints pending before the Public Service Commission at no charge. Not only is the service provided free of charge, but mediation is also less expensive than the formal complaint process because the assistance of an attorney is not necessary for mediation. In fact, the parties are encouraged not to bring an attorney to the mediation meeting.

The formal complaint process before the Commission invariably results in a determination by which there is a "winner" and a "loser" although the value of winning may well be offset by the cost of attorneys fees and the delays of protracted litigation. Mediation is not only a much quicker process but it also offers the unique opportunity for informal, direct communication between the two parties to the complaint and mediation is far more likely to result in a settlement which, because it was mutually agreed to, pleases both parties. This is traditionally referred to as "win-win" agreement.

The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating one participant's perspective or proposal into a form that is more understandable and acceptable to the other participant, (8) assist the participants with the actual negotiation process, (9) occasionally a mediator may propose a possible solution, and (10) on rare occasions a mediator may encourage a participant to accept a particular solution. The mediator will not possess any specialized knowledge of the utility industry or of utility law.

In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must send a representative who has full authority to settle the complaint case. The essence of mediation stems from the fact that the participants are both genuinely interested in resolving the complaint.

Because mediation thrives in an atmosphere of free and open discussion, all settlement offers and other information which is revealed during mediation is shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information. The only information which must be disclosed to the Public Service Commission is (a) whether the case has been settled and (b) whether, irrespective of the outcome, the mediation effort was considered to be a worthwhile endeavor. The Commission will not ask what took place during the mediation.

If the dispute is settled at the mediation, the Commission will require a signed release from the complainant in order for the Commission to dismiss the formal complaint case.

If the dispute is not resolved through the mediation process, neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.



Dale Hardy Roberts
Secretary of the Commission

Date: February 5, 2004.

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	Case No. TC-2004-_____
)	
Tri-State Telecommunications, Inc. d/b/a The Phone Company.)	
)	
)	
Respondent.)	

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 Tri-State Telecommunications, Inc. d/b/a The Phone Company (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:

1. Respondent Tri-State Telecommunications, Inc. d/b/a The Phone Company 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. Tri-State Telecommunications, Inc. d/b/a The Phone Company has provided the following contact information to the Commission:

Tri-State Telecommunications, Inc. d/b/a The Phone Company
1801 Central Ave., Suite F
Hot Springs, AR 71903

According to the Office of the Secretary of State of Missouri, the Company was administratively dissolved on January 9, 2002. Tri-State Telecommunications, Inc. d/b/a The Phone Company's registered agent with the Missouri Secretary of State's Office is:

Sondra Morgan
312 East Capitol, P. O. Box 456
Jefferson City, MO 65102

2. 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.

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

4. 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.

5. 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."

6. 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.

7. On February 3, 2003, the Executive Director of the Commission sent all regulated utilities, including Tri-State Telecommunications, Inc. d/b/a The Phone Company, 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.

8. 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.

9. 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... ."

10. 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).

11. 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 certificates and tariffs. Therefore, Staff requests the Commission to cancel the certificate of service authority granted on July 3, 2001 in Case No. TA-2001-596, to become effective when the Company's tariff became effective. As the Company appears not to have filed a tariff, no direction canceling that tariff appears necessary.

WHEREFORE, Staff now requests that the Commission open a complaint case pursuant to Section 386.390; and, after hearing, find that Tri-State Telecommunications, Inc. d/b/a The Phone Company 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 Section 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 therefore cancel the certificate of service authority of Tri-State Telecommunications, Inc. d/b/a The Phone Company granted on July 3, 2001 in Case No. TA-2001-596.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ David A. Meyer

David A. Meyer
Associate General Counsel
Missouri Bar No. 46620

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)
david.meyer@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 the following this 4th day of February 2004.

/s/ David A. Meyer

Tri-State Telecommunications, Inc. d/b/a The Phone Company
1801 Central Ave., Suite F
Hot Springs, AR 71903

Sondra Morgan
Registered Agent for Tri-State Telecommunications, Inc. d/b/a The Phone Company
312 East Capitol, P. O. Box 456
Jefferson City, MO 65102

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 Tri-State Telecommunications, Inc. d/b/a The Phone Company.

Janis E. Fischer
Janis E. Fischer

Subscribed and sworn to before me this 3rd day of February, 2004.

D SUZIE MANKIN
Notary Public - Notary Seal
STATE OF MISSOURI
COLE COUNTY
MY COMMISSION EXP. JUNE 21, 2004

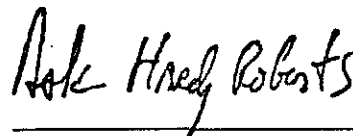
Suzie Mankin
NOTARY PUBLIC

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 5th day of Feb. 2004 .**



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

MISSOURI PUBLIC SERVICE COMMISSION

February 05, 2004

Case No. TC-2004-0337

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

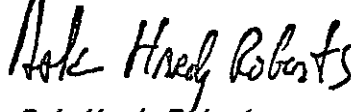
John B Coffman
P.O. Box 7800
200 Madison Street, Suite 640
Jefferson City, MO 65102

Tri-State Telecommunications, Inc.
Official Representative
1801 Central Avenue, Suite F
P.O. Box 22600
Hot Springs, AR 71903

Tri-State Telecommunications, Inc.
d /b/a The Phone Co
c/o Sondra Morgan
312 East Capitol Ave
Jefferson City, MO 65102

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

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge