

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

The Staff of the Missouri)	
Public Service Commission,)	
)	
Complainant,)	
v.)	Case No. _____
)	
Airnex Communications, Inc.,)	
)	
Respondent.)	

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and initiates this Complaint pursuant to Section 386.390 RSMo (2000)¹ and Rule 4 CSR 240-2.070, against Airnex Communications, Inc. (Airnex or the Company) for violation of Section 392.210.1 and Rule 4 CSR 240-3.540(1) relating to the filing of an annual report. In support of its Complaint, Staff respectfully states as follows:

1. Airnex Communications, Inc. is a “telecommunications company” and “public utility” as defined in Section 386.020 and is subject to the jurisdiction of the Missouri Public Service Commission (the Commission) pursuant to Section 386.250.

2. In an Order² issued April 6, 1999, and effective April 9, 1999, the Commission granted Airnex a certificate of service authority to provide intrastate interexchange telecommunications services in the State of Missouri.

¹ All references to statutory sections refer to the Revised Statutes of Missouri (2000), as currently supplemented.

² See *Order Approving Interexchange Certificate Of Service Authority And Order Approving Tariff*, issued April 6, 1999 in Commission Case No. TA-99-355.

3. The Company is incorporated under the laws of the State of California and is listed as an “active” corporation by the California Secretary of State and as a corporation in “good standing” with the Missouri Secretary of State.

4. As of the date of the filing of this Complaint, the Company’s registered agent according to the Missouri Secretary of State is:

National Registered Agents, Inc.
300-B East High Street
Jefferson City, Missouri

5. The Company has provided the following contact information to the Commission:

Airnex Communications, Inc.
3180 Crow Canyon Place, Suite 109
San Ramon, CA 94583

6. Section 386.390.1 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, order or decision of the Commission.”

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

8. The Missouri courts have imposed a duty upon the Public Service Commission to first determine matters within its jurisdiction before proceeding to those courts for statutory penalties. See *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).

9. If the Commission determines after a contested hearing that the Company failed, omitted, or neglected to file its annual report, the Commission may then authorize its General Counsel to bring a penalty action in the circuit court as provided for in Section 386.600.

10. 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.”

11. 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.

12. On January 15, 2008, the Executive Director of the Commission emailed to Airnex a communication notifying the Company of the requirement to file an annual report covering the calendar year 2007. Attached to this email the Executive Director sent the appropriate form for the Company to complete and return to the Commission along with instructions on how the Company could complete its filing electronically. The email was sent to the address that was current in the Commission’s Electronic Filing and Information System (“EFIS”) and was not returned. See Exhibit A.

13. The Company never returned a completed form, nor did it file its 2007 annual report electronically.

14. Commission Rule 4 CSR 240-2.070(5)(E) requires “a statement as to whether the complainant has directly contacted the person, corporation or public utility about which complaint is being made.” In addition to the correspondence sent by the Executive Director in January 2008, the Commission’s General Counsel sent Airnex a letter on May 27, 2008 notifying the Company that continued failure to submit an annual report may subject the Company to legal action to recover penalties as provided by state law. See Exhibit B.

15. On October 14, 2008, the General Counsel’s Office sent to Airnex another letter notifying the Company that continued failure to submit an annual report may subject the Company to legal action to recover penalties as provided by state law. See Exhibit C.

16. As of the date of the filing of this Complaint, the Company has not filed an annual report for the calendar year 2007.

17. 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...”

PRAYER FOR RELIEF

WHEREFORE, Staff now requests that the Commission open a complaint case pursuant to Section 386.390; and, after hearing, find that Airnex Communications, Inc. failed, omitted, or neglected to file its 2007 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 for the statutory penalties set forth in Sections 392.210.1.

Respectfully submitted,

/s/ Eric Dearmont

Eric Dearmont
Assistant General Counsel
Missouri Bar No. 60892

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-5472 (Telephone)
(573) 751-9285 (Fax)
eric.dearmont@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 25th day of February, 2009.

/s/ Eric Dearmont

Senn, Nikki

From: annualreports
Sent: Tuesday, January 15, 2008 4:08 PM
Subject: 2007 Annual Report Form(s) from the Missouri Public Service Commission - CLEC-IXC
Importance: High
Attachments: 2007 AR cover letter Telco specifically-Electronic.pdf; CLEC-IXC Annual Report 2007 Fillable Form.pdf; CLEC-IXC Annual Report 2007.pdf; CLEC_IXC_Annual_Report_2007.xls

This correspondence serves as electronic distribution of the 2007 Annual Report form for companies with the registered utility type of Telephone (and a subtype of CLEC, CLEC/IXC, or IXC) at the Missouri Public Service Commission. A paper copy of the document will not be forwarded.

Review the cover letter attached for more details about the annual report form requirements. The forms are also available on the Missouri Public Service Commission website (<http://www.psc.mo.gov/forms>). The 2007 Annual Report form is due to the Missouri Public Service Commission on or before April 15, 2008. The attached electronic documents must be completed and returned using one of the acceptable methods.

Different formats of the form have been provided for your convenience. Updating Adobe Acrobat Reader to the newest version is recommended for the fillable form.

- The attached form (CLEC-IXC Annual Report 2007 Fillable Form.pdf) is designed to be filled out online in PDF format using Adobe Acrobat. After completing, save the file to your computer before submission in EFIS. For submission by mail, remember to sign the affidavit before sending. Please answer all questions carefully and completely, and send the completed form as instructed in the cover letter.
- Another version of the form (CLEC-IXC Annual Report 2007.pdf) is designed to be printed and filled out by hand. Please answer all questions carefully and completely, and send the completed form as instructed in the cover letter.
- An Excel document (CLEC-IXC Annual Report 2007.xls) is also attached for on-screen input of information. After completing, save the file to your computer before submission in EFIS.

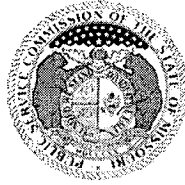
If you have any questions regarding the form(s), please contact Joan Wandel by phone (573-751-4785) or by e-mail (Joan.Wandel@psc.mo.gov).

Thank you.

Missouri Public Service Commission
PO Box 360
Jefferson City, MO

Exhibit A

2/23/2009



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

TERRY JARRETT

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>

WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration and
Regulatory Policy

ROBERT SCHALLENBERG
Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

January 15, 2008

RE: Calendar Year 2007 Annual Report

**IMPORTANT NOTICE TO
ALL MISSOURI PUBLIC UTILITIES**

Pursuant to Section 392.210, RSMo., Section 393.140, RSMo., and the rules at 4 CSR 240-3.540 (Telecommunications Companies), public utilities are required to submit an annual report to the Missouri Public Service Commission.

Please Note:

- ✓ Due on or before **April 15, 2008.**
- ✓ The form(s) submitted to the Commission must be originals in loose-leaf format (in lieu of a hard copy, an electronic version may be submitted in the Commission's Electronic Filing and Information System, EFIS).
- ✓ Attempts to substitute forms such as stockholder reports without concurrently filing official Commission forms with appropriate cross-references will be considered non-compliant.
- ✓ Complete each question fully and accurately, even if it has been answered in a previous annual report. Enter the word "None", "0" or "N/A" where it truly and completely states the fact. An unanswered question will result in a deficiency notice requiring an additional response.
- ✓ Each utility must submit a report even if it had **NO** revenues during the reporting year.

Reports that do not meet these requirements will not be considered "submitted." Utilities will be subject to legal action under state law for failure to submit annual reports on time without a timely extension request. A utility that does not timely file its annual report, or its response to a notice that its annual report is deficient when a response is sought, is subject to a penalty of one hundred dollars for each day that it is late in filing its annual report or response to a notice of deficiency.

Requests to submit annual report data under seal:

Utilities may request classification of selected portions of their annual report as non-public. Please note that all information classified as non-public will still remain subject to potential disclosure as provided under the Missouri open records act (Chapter 610 RSMo) and Section 386.480, RSMo..

January 15, 2008

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In order to take advantage of this procedure, the submitter, either through EFIS or in hard copy form, must:

- A. Provide both a fully completed version to be kept under seal and a redacted public version that clearly informs the reader that the redacted information has been submitted under seal. The cover of each version must clearly identify whether it is the public or the non-public version. Each page of each version of the report containing non-public information should be clearly identified as containing such information.
- B. Submit both versions of the annual report with a cover letter stating that the utility is designating some or all of the information in its annual report as confidential information, including the name, phone number and e-mail address (if available) of the person responsible for addressing questions regarding the confidential portions of the annual report.
- C. Prominently attach a detailed affidavit to both versions that identifies the specific types of information to be kept under seal, provides a reason why the specific information should be a closed record, and stating that none of the requested information is available to the public in any format.

Requests for extension to submit annual report:

Utilities may request an extension of less than 30 days by 1) submitting a written notification prior to April 15th to the Manager of the Data Center (the EFIS option for this is located under "Filing/Submission - Non-case Related Submission - MO PSC Annual Report Extension Request") that states the reason for the extension, and 2) certifying that a copy of the written request was sent to all parties of record in pending cases where the Company's activities are the primary focus (i.e., where the Company is identified as a moving party in the case caption) of the proceeding.


All requests for an extension of 30 days or more must be filed prior to April 15th as a legal pleading. If the Company is a corporation or partnership, the pleading must be filed by an attorney licensed to practice in Missouri. If the utility is individually-owned, the Company owner may file this pleading. The pleading must state the reason for the extension and certify that a copy of the written request was sent to all parties of record in pending cases where the Company's activities are the primary focus of the proceeding (i.e., where the Company is identified as a moving party in the case caption). The filing should be submitted in pleading form and comply with the filing requirements of Chapter 2 of 4 CSR 240.

Questions about the annual report form or its content may be submitted to:
Joan Wandel (573) 751-4785 or by email at Joan.Wandel@psc.mo.gov

The completed document should be submitted under EFIS (accessible from the Commission's Web page <http://www.psc.mo.gov/>) or mailed to:

Manager of the Data Center
Missouri Public Service Commission
200 Madison Street, Suite 100, Jefferson City, MO 65101
(P.O. Box 360, Jefferson City, MO 65102-0360)

Sincerely,



Wess A. Henderson
Executive Director

Enclosure

Senn, Nikki

From: Mail Delivery Subsystem [MAILER-DAEMON@MOMAIL1.mo.gov]
Sent: Tuesday, January 15, 2008 4:11 PM
To: annualreports
Subject: Return receipt

Attachments: ATT1017866.txt; ATT1017867.txt



ATT1017866.txt ATT1017867.txt (1
(629 B) KB)

The original message was received at Tue, 15 Jan 2008 16:10:36 -0600 from [10.74.4.4]

----- The following addresses had successful delivery notifications ----- <hong.ji@airnex.com> (relayed to non-DSN-aware mailer) <arnold@airnex.com> (relayed to non-DSN-aware mailer)

----- Transcript of session follows ----- <arnold@airnex.com>... relayed; expect no further notifications
<hong.ji@airnex.com>... relayed; expect no further notifications



Commissioners

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Chairman

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Missouri Public Service Commission

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Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

May 27, 2008

Shige Yamaji
Airmex Communications, Inc.
3180 Crow Canyon Place, Suite 109
San Ramon, CA 94583

Dear Shige Yamaji:

Pursuant to Section 392.210, RSMo Section 393.140, RSMo and the rules at 4 CSR 240-3.165 (Electric Utilities), 4 CSR 240-3.245 (Gas Utilities), 4 CSR 240-3.335 (Sewer Utilities), 4 CSR 240-3.435 (Steam Heating Utilities), 4 CSR 240-3.540 (Telecommunications Companies), and 4 CSR 240-3.640 (Water Utilities), public utilities are required to submit an annual report to the Missouri Public Service Commission on or before April 15th.

This letter is a notification that the Missouri Public Service Commission has not received from your company its required 2007 Annual Report as of the date of this letter.

Since your company has not filed its report on or before April 15th, it is subject to legal action under state law for failure to submit an annual report on time. A utility that does not file its annual report in a timely manner is subject to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day that it is late in filing its annual report. If this has been an oversight, filing of the required annual report no later than **June 13, 2008** will prevent assessment of the applicable penalty.

The completed annual report document should be submitted to the Public Service Commission either through the Electronic Filing and Information System (EFIS), which may be accessed from the Commission's web page (<http://www.psc.mo.gov/>), or by mail to the following address:

Data Center
Missouri Public Service Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, MO 65102-0360

If you require assistance submitting the completed annual report in **EFIS**, please contact the Helpdesk by phone (866-365-0924 or 573-526-3648) or by e-mail (helpdesk@psc.mo.gov). Questions regarding the annual report form or its content may be submitted to Joan Wandel by telephone (573-751-4785) or by email at Joan.Wandel@psc.mo.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Thompson', followed by a long horizontal flourish.

Kevin A. Thompson
General Counsel



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

ROBERT M. CLAYTON III

TERRY JARRETT

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Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

October 14, 2008

Shige Yamaji
Airmex Communications, Inc.
3180 Crow Canyon Place, Suite 109
San Ramon, CA 94583

Dear Mr. Yamaji :

Your file has been forwarded to the Missouri Public Service Commission (Commission) General Counsel's Office because the Commission did not receive your 2007 Annual Report, and it is now considered delinquent as of April 15, 2008. This letter is to determine the status of your annual report and when we can expect your filing of the report.

- Since your company did not file its report on or before the April 15, 2008 deadline, you are subject to legal action under Section 392.210 or 393.140 (6) RSMo (2000). A utility that does not file its report on time is subject to a penalty of \$100.00, and an additional penalty of \$100.00 for each day that it is late in filing its report.¹ Presently, the potential penalties accrued by your company are in the amount of **\$18,300.00**.
- If we receive your annual report by **Friday, October 24, 2008**, we will not proceed with a Complaint case against your company for the applicable penalties.
- Your annual report needs to be sent to:

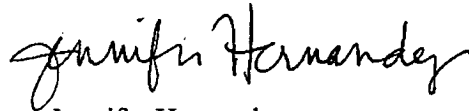
Data Center
Missouri Public Service Commission
200 Madison Street, Suite 100
P. O. Box 360
Jefferson City, MO 65102-0360

¹ See 4 CSR 240-3.165 (9), 240-3.245 (9), 240-3.335 (9), or 240-3.640 (9).

You may also submit your annual report through the Electronic Filing and Information System (EFIS), which may be accessed from the Commission's web page <http://www.psc.mo.gov/>. If you require assistance submitting the completed annual report in EFIS, please contact the Commission's Information Services Helpdesk by phone (866-365-0924 or 573-526-3648) or by e-mail (helpdesk@psc.mo.gov).

Thank you for your prompt attention to this matter. Should you have any questions, or if I may be of any assistance, please contact me at 573-751-8706 or Steven Reed at 573-751-3015.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Hernandez".

Jennifer Hernandez
Legal Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65109
(573)-751-8706
jennifer.hernandez@psc.mo.gov