

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	Case No. TC-2009-_____
v.)	
)	
FamilyTel of Missouri, LLC.)	
)	
Respondent.)	

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (Staff), through the undersigned counsel, and pursuant to Section 386.390 RSMo (2000) and 4 CSR 240-2.070 (1), files this Complaint with the Missouri Public Service Commission (Commission) against Respondent FamilyTel of Missouri, LLC (Respondent or Company) for violation of the Commission’s statutes and rules relating to the filing of annual reports and the payment of annual assessments. In support of its Complaint, Staff respectfully states the following:

General Allegations Common To All Counts

1. Respondent is a “telecommunications company” as defined in Section 386.020 (52) RSMo (Supp. 2008).
2. Respondent is a “public utility” as defined in Section 386.020 (43) RSMo (Supp. 2008).
3. Pursuant to Section 386.250 (2) RSMo (2000), Respondent is subject to the jurisdiction of the Commission.
4. On August 9, 2002, the Commission in Case No. TA-2002-357 granted the Respondent a certificate of service authority to provide competitive basic local

telecommunications services in portions of the state of Missouri, and approved the Company's proposed tariff, Tariff No. 200200585.

5. On March 10, 2004, the Commission in Case No. XA-2004-0282 granted the Respondent a certificate of service authority to provide interexchange telecommunications services, and approved the company's proposed tariff, Tariff No. YX-2004-0845.

6. The Respondent's contact information on-file with the Commission is:

Brad Warden
FamilyTel of Missouri, LLC
1200 Arkansas Road
West Monroe, LA 71291
bwarden@familytel.com

7. Respondent provided the Missouri Secretary of State's office with the following registered agent contact information:

Mark W. Comley
601 Monroe Street, Suite 301
Jefferson City, MO 65101

8. Section 386.390.1 RSMo (2000) 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, or order or decision of the commission."

9. 4 CSR 240-2.070 authorizes the Staff, through the general counsel, to file a complaint for a violation of any statute, rule, order, or decision of the Commission.

10. Section 386.600 RSMo (2000) provides "[a]n action to recover a penalty....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 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."

COUNT ONE

Respondent has failed to file a 2007 Annual Report

11. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs one (1) through ten (10) above.

12. Section 392.210.1 RSMo (2000) requires every telecommunications company to “....file with the commission an annual report at a time and covering the yearly period fixed by the commission”, and 4 CSR 240-3.540 (1) requires the report to be filed on or before April 15th of each year.

13. On January 15, 2008, pursuant to 392.210.1 RSMo (2000), the Commission’s Budget and Fiscal Services Department sent an electronic notice to the Respondent’s on-file email address, which outlined the annual report process and included the report form.

14. On May 27, 2008, the Commission’s General Counsel sent a demand letter notifying the Respondent that the Commission had not yet received the required 2007 annual report.

15. On October 14, 2008, the General Counsel’s Office, through the undersigned attorney, sent another demand letter, allowing until October 24, 2008, to file the required 2007 annual report.

16. As of the date of this pleading, Respondent has failed, omitted, or neglected to file its 2007 annual report.

17. Section 392.210.1 RSMo (2000) 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 or answer.

COUNT TWO

Respondent has failed to pay its fiscal year 2008 assessment

18. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs one (1) through seventeen (17) above.

19. On June 22, 2007, the Commission in Case No. AO-2007-0486, issued its Assessment Order for Fiscal Year 2008 (2008 Assessment Order) pursuant to Section 386.370 RSMo (Supp. 2007).

20. The 2008 Assessment Order fixed the amount allocated to telephone public utilities at \$3,172,843.

21. Section 386.370.5 RSMo (2000) provides

[i]n order to enable the commission to make the allocations and assessments herein provided for, each public utility subject to the jurisdiction of the commission....shall file....on or before March thirty-first of each year, a statement under oath showing its gross intrastate operating revenues for the preceding calendar year....

22. As of the date of this filing, Respondent has not filed a Statement of Revenue with the Commission for its 2006 calendar year intrastate operations.

23. Section 386.370.5 RSMo (2000) provides “....if 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.”

24. The amount assessed to Respondent for the fiscal year beginning July 1, 2007 was \$423.45.

25. On June 25, 2007, the Commission’s Executive Director notified the Respondent by letter that the Company was assessed \$423.45, and the due date for the assessment amount

was July 15, 2007, or payable in quarterly installments on July 15, 2007, October 15, 2007, January 15, 2008, and April 15, 2008.

26. On November 6, 2007, the Commission's General Counsel sent a demand letter to the Respondent stating that if payment of the \$317.58 remaining due was not received by December 6, 2007, the General Counsel's office would initiate legal action to collect the assessment and penalties.

27. As of the date of this filing, Respondent has made a quarterly payment of \$105.87 on July 23, 2007, a quarterly payment of \$105.86 on November 13, 2007, and \$211.72 is the balance remaining.

28. Section 386.570.1 RSMo (2000) provides that

[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.

29. Section 386.570.2 RSMo (2000) provides that “....in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.”

COUNT THREE

Respondent has failed to pay its fiscal year 2009 assessment

30. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs one (1) through twenty-nine (29) above.

31. On June 24, 2008, the Commission in Case No. AO-2008-0395, issued its Assessment Order for Fiscal Year 2009 (2009 Assessment Order) pursuant to Section 386.370 RSMo (Supp. 2007).

32. The 2009 Assessment Order fixed the amount allocated to telephone public utilities at \$3,012,352.

33. Section 386.370.5 RSMo (2000) provides

[i]n order to enable the commission to make the allocations and assessments herein provided for, each public utility subject to the jurisdiction of the commission....shall file....on or before March thirty-first of each year, a statement under oath showing its gross intrastate operating revenues for the preceding calendar year....

34. As of the date of this filing, Respondent has not filed a Statement of Revenue for its 2007 calendar year intrastate operations with the Commission.

35. Section 386.370.5 RSMo (2000) provides “....if 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.”

36. The amount assessed to Respondent for the fiscal year beginning July 1, 2008 was \$538.88.

37. On June 25, 2008, the Commission’s Executive Director notified the Respondent by letter that the Company was assessed \$538.88, and the due date for the assessment amount was July 15, 2008, or payable in quarterly installments on July 15, 2008, October 15, 2008, January 15, 2009, and April 15, 2009.

38. As of the date of this filing, Respondent has failed to forward a fiscal year 2009 assessment payment to the Commission.

39. On November 6, 2008, the Commission’s General Counsel sent a demand letter to the Respondent stating that if payment of the \$538.88 was not received by December 6, 2008, the General Counsel’s office would initiate legal action to collect the assessment and penalties.

40. On December 19, 2008, the Commission's Budget and Fiscal Services Department emailed a demand letter to the Respondent's on-file email address, requesting payment of the fiscal year 2009 assessment be submitted as soon as possible.

41. Section 386.570.1 RSMo (2000) provides that

[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.

42. Section 386.570.2 RSMo (2000) provides that "...in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense."

Conclusion

WHEREFORE, the Staff of the Missouri Public Service Commission respectfully requests the Missouri Public Service Commission give notice to the Respondent as required by law and, after the opportunity for hearing, issue an order for Count I: that finds the Respondent has failed, omitted, or neglected to file an annual report for 2007 and authorizes the General Counsel's Office to bring an action in circuit court as provided in Section 386.600 and 392.210.1 RSMo (2000) to enforce the Commission's annual report statutes and rules, and a penalty action against the Respondent; for Count II: that finds the Respondent has failed to pay the remaining \$211.72 fiscal year 2008 assessment and authorizes the General Counsel's Office to bring a penalty action against the Respondent in circuit court as provided in Sections 386.600 and 386.570 RSMo (2000) for the collection of the remaining assessment amount and penalties; for Count III: that finds the Respondent has failed to pay the \$538.88 fiscal year 2009 assessment and authorizes the General Counsel's Office to bring a penalty action against the Respondent in

circuit court as provided in Sections 386.600 and 386.570 RSMo (2000) for the collection of the assessment amount and penalties; and for any other relief the Commission finds just and proper within its jurisdiction.

Respectfully submitted,

/s/ Jennifer Hernandez

Jennifer Hernandez

Legal Counsel

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Missouri Public Service Commission

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