PUBLIC SERVICE COMMISSION
P O BOX 360
JEFFERSON CITY MO 65102

CERTIFIED MAIL

7001 1940 0002 6942 6133

04350512

FROM ZIP

REASON CHECKED
Unclaimed
Refused
Attempted Not Known
Insufficient Address
No Such Street
No Such Number
No Such Office In State
Do not repeat in this envelope

Legal Department
Maxcom, Inc.
1250 Wood Branch Dr., Ste. 600
Houston, TX 77079

REASON CHECKED
Unclaimed
Refused
Attempted Not Known
Insufficient Address
No Such Street
No Such Number
No Such Office In State
Do not repeat in this envelope

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

TC-04-423 2-23-04

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:

Legal Department
Maxcom, Inc.
1250 Wood Branch Dr., Ste. 600
Houston, TX 77079

COMPLETE THIS SECTION ON DELIVERY

A. *Signature*

X ☐ 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) 7001 1940 0002 6942 6133

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

The Staff of the Missouri Public Service Commission, Complainant,	)	
v.	)	Case No. TC-2004-0423
Maxcom, Inc., Respondent.	)	

NOTICE OF COMPLAINT

Maxcom, Inc.
1250 Wood Branch Drive, Suite 600
Houston, Texas 77079

Maxcom, Inc.
c/o SNR Reg Agent Services Inc.
4520 Main St., Suite 1100
Kansas City, Missouri 64111

Maxcom Acquisition Corporation
c/o Joseph F. Olson – Registered Agent
17 Research Park Dr.
St. Louis, Missouri 63304

CERTIFIED MAIL

On February 19, 2004, the Staff of the Missouri Public Service Commission filed a complaint with the Commission against Maxcom. A copy of the complaint is enclosed. Under Commission Rule 4 CSR 240-2.070, Maxcom has 30 days from the date of this notice to file an answer or to file notification that the complaint has been satisfied. Maxcom 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

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Dated at Jefferson City, Missouri,
on this 23rd day of February, 2004.

Pridgin, Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

The Staff of the Missouri Public Service Commission,	)	
Complainant,	)	
v.	)	Case No. TC-2004-____
Maxcom, Inc.,	)	
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 Maxcom, Inc., (the "Company") for violation of the Commission's statutes and rules relating to annual report filings and annual assessments. In support of its complaint, Staff respectfully states as follows:

GENERAL ALLEGATIONS

1. Respondent Maxcom, 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-97-129 on December 13, 1996. On November 13, 1998, the Commission granted Maxcom, Inc. a certificate of service authority to provide competitive basic local exchange ("CLEC") telecommunications services in Case No. TA-98-339. Maxcom, Inc. has provided the following contact information to the Commission:

Maxcom, Inc.
1250 Wood Branch Drive, Suite 600
Houston, TX 77079

The Missouri Secretary of State's Office lists the following registered agent contact information for Maxcom, Inc. and for Maxcom Acquisition Corporation, the company that Maxcom, Inc. is reported by the Missouri Secretary of State's Office to have merged with on October 27, 2000:

Maxcom, Inc.
c/o SNR Reg Agent Services Inc.
4520 Main St., Suite 1100
Kansas City, MO 64111

Maxcom Acquisition Corporation
c/o Joseph F. Olson – Registered Agent
17 Research Park Dr.
St. Louis, MO 63304

2. According to the Office of the Secretary of State of Missouri official web site, Maxcom Acquisition Corporation, the business entity resulting from the merger of MaxCom, Inc. on October 27, 2000, *was administratively dissolved on September 4, 2002.*

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 Maxcom, 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. Section 386.370 authorizes the Commission to determine the amount of an annual assessment for expenses of the Commission to be collected from public utilities operating in this state. This statute provides that the public utility shall pay the amount assessed by July 15 or may at its election pay the assessment in four equal installments not later than July 15, October 15, January 15 and April 15.

12. Pursuant to Section 386.370, the Commission promulgated its *Assessment Order for Fiscal Year 2004* in Case No. AO-2003-0573, "In the Matter of the Assessment Against the Public Utilities in the State of Missouri for the Expenses of the Commission for the Fiscal Year Commencing July 1, 2003."

13. As called for by the *Assessment Order* in Case No. AO-2003-0573, the Budget and Fiscal Services Department calculated the amount of the 2004 Fiscal Year annual assessment for the Company and the Commission's Director of Administration rendered the statement of its assessment on behalf of the Commission by letter on June 27, 2003.

14. Also in the *Assessment Order*, the Commission directed "[t]hat each public utility shall pay its assessment as set forth herein."

15. If the Company elected to pay on a quarterly basis, quarterly installments were due on July 15, 2003; October 15, 2003; and January 15, 2004. Thus, the Company is delinquent on at least the first three-quarters of its 2004 annual assessment.

16. On October 29, 2003, the Executive Director of the Commission sent a letter to an address that the Company had provided and that was contained in the EFIS system, informing the Company of its unpaid assessment for Fiscal Year 2004.

17. The Company, as of the date of this pleading, has not paid its Fiscal Year 2004 assessment and therefore has not complied with the Commission's *Assessment Order*. See Affidavit of Helen Davis, attached to this Complaint as Exhibit B.

COUNT THREE

18. Section 386.370 authorizes the Commission to determine the amount of an annual assessment for expenses of the Commission to be collected from public utilities operating in this state. This statute provides that the public utility shall pay the amount assessed by July 15 or may at its election pay the assessment in four equal installments not later than July 15, October 15, January 15 and April 15.

19. Pursuant to Section 386.370, the Commission promulgated its *Assessment Order for Fiscal Year 2003* in Case No. AO-2002-1156, "In the Matter of the Assessment Against the Public Utilities in the State of Missouri for the Expenses of the Commission for the Fiscal Year Commencing July 1, 2002."

20. As called for by the *Assessment Order* in Case No. AO-2002-1156, the Budget and Fiscal Services Department calculated the amount of the 2003 Fiscal Year annual assessment for the Company and the Commission's Director of Administration rendered the statement of its assessment on behalf of the Commission by letter on June 26, 2002.

21. Also in the *Assessment Order*, the Commission directed "[t]hat each public utility shall pay its assessment as set forth herein."

22. On January 29, 2003, the Executive Director of the Commission sent a letter to an address that the Company had provided and that was contained in the EFIS system, informing the Company of its unpaid assessment for Fiscal Year 2003.

23. The Company, as of the date of this pleading, has not paid its Fiscal Year 2003 assessment or its Fiscal Year 2004 (as pled in COUNT TWO) and therefore has not complied with the Commission's *Assessment Orders for Fiscal Years 2003 and 2004*. See Affidavit of Helen Davis, attached to this Complaint as Exhibit B.

24. Any public utility that fails, omits, or neglects to obey an order of the Commission "is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars" for each offense, if there is no penalty otherwise provided. Section 386.570.1. The statute further states that "in the case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense." Section 386.570.2. No penalty for failing to pay annual assessments is otherwise provided in Chapter 386 or elsewhere in the Commission's statutes.

25. Staff points out that with regard to the Company's past due assessments for Fiscal Years 2003 and 2004, Section 386.590 provides that "[a]ll penalties accruing under this chapter shall be cumulative of each other, and the suit for recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any original prosecution against any corporation, person or public utility, or any officer, director, agent or employee thereof."

26. As part of the Commission *Order* in this case, the Staff requests that the Commission formally find that it may publicly release the amounts of the overdue assessments for Fiscal Years 2004 and 2003. As the assessments are derived from statements of revenue provided by regulated utilities and thus subject to the provisions of Section 386.480 ("No information furnished to the commission by a ... public utility ... shall be open to public inspection or made public except on order of the commission ..."), Staff is concerned that in the

absence of a Commission order directing its release, the revelation of the assessment amounts in circuit court or elsewhere may be improper.

COUNT FOUR

27. 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).

28. 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 take notice of the Company's reported October 27, 2000 merger and subsequent dissolved status since September 4, 2002 and find that the Company's default constitutes its consent for the Commission to cancel its certificates and tariffs, and therefore cancel the certificates of service authority of Maxcom, Inc. to provide CLEC and interexchange telecommunications services and the accompanying tariffs, Mo. PSC Tariff No. 1, Mo. PSC Tariff No. 2, and Mo. PSC Tariff No. 3.

PRAYER FOR RELIEF

WHEREFORE, Staff now requests that the Commission open a complaint case pursuant to Section 386.390; and, after hearing, find that Maxcom, 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) and 386.570 and 386.590 (for failing to pay assessments); and order that the amounts of the overdue assessments may be publicly released.

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 take notice of Maxcom Inc.'s reported October 27, 2000 merger and subsequent dissolved status since September 4, 2002 and find that the Company's default constitutes its consent for the Commission to cancel its certificates and tariffs, and therefore cancel the certificates of service authority of Maxcom, Inc. to provide CLEC and interexchange telecommunications services and the accompanying tariffs, Mo. PSC No. 1, Mo. PSC No. 2, and Mo. PSC No. 3.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Robert S. Berlin

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

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 19th day of February 2004.

/s/ Robert S. Berlin

Maxcom, Inc.
1250 Wood Branch Park Drive, Suite 600
Houston, TX 77079

Maxcom, Inc.
c/o SNR Reg Agent Services Inc.
4520 Main St. Suite 1100
Kansas City, MO 64111

Maxcom Acquisition Corporation
c/o Joseph F. Olson – Registered Agent
17 Research Park Dr.
St. Louis, MO 63304

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 Maxcom, Inc.

Janis E. Fischer

Janis E. Fischer

Subscribed and sworn to before me this 19th day of February, 2004.

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

NOTARY PUBLIC

Exhibit A

AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Helen Davis, Accountant II in the Commission's Budget and Fiscal Services Department, first being duly sworn on my oath state that the Public Service Commission's records do not reflect the receipt of the Fiscal Year 2004 and Fiscal Year 2003 annual assessments from Maxcom, Inc.

Helen Davis

Helen Davis

Subscribed and sworn to before me this 19th day of February, 2004.

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

D Suzie Mankin

NOTARY PUBLIC

Exhibit B

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 23rd day of Feb. 2004 .

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

MISSOURI PUBLIC SERVICE COMMISSION

February 23, 2004

Case No. TC-2004-0423

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

Maxcom Acquisition Corporation
Joseph Olson
17 Research Park Dr.
St. Louis, MO 63304

Maxcom, Inc.
Legal Department
1250 Wood Branch Dr., Ste. 600
Houston, TX 77079

SNR Reg Agent Services, Inc.
Legal Department
4520 Main St., Ste. 1100
Kansas City, MO 64111

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

Sincerely,

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge