

FILED²

APR 16 2004

Missouri Public
Service Commission

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

3-1-04

TC-2004-0435

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:

John K. Egan
3809 Castleman
St. Louis, MO 63110

2. Article Number
(Transfer from service label)

7001 1940 0002 6942 5891

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
X 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

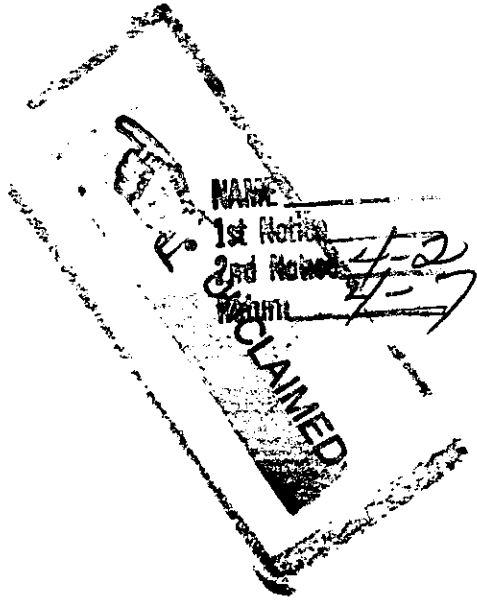
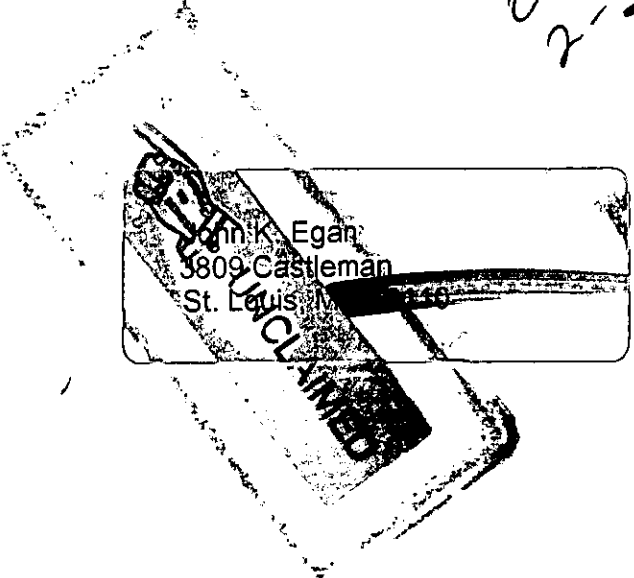
PUBLIC SERVICE COMMISSION
P O BOX 360
JEFFERSON CITY MO 65102



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JEFFERSON CITY MO 65102

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

The Staff of the)
Missouri Public Service Commission,)
)
Complainant,)
)
v.)
)
Midwestern Services, L.C. d/b/a)
Midwestern Tel,)
Respondent.)

Case No. TC-2004-0435

NOTICE OF COMPLAINT

Midwestern Services, L.C. d/b/a Midwestern Tel
2751 North Ashland Avenue
Chicago, Illinois 60614

John K. Egan
3809 Castleman
St. Louis, Missouri 63110

CERTIFIED MAIL

On February 26, 2004, the Staff of the Missouri Public Service Commission filed a complaint with the Commission against Midwestern Tel. A copy of the complaint is enclosed. Under Commission Rule 4 CSR 240-2.070, Midwestern Tel has 30 days from the date of this notice to file an answer or to file notification that the complaint has been satisfied. Midwestern Tel 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 that reads "Dale Hardy Roberts". The signature is written in a cursive style with a large initial "D".

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

(S E A L)

Dated at Jefferson City, Missouri,
on this 1st day of March, 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.
Midwestern Services, L.C. d/b/a
Midwestern Tel,
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 Midwestern Services, L.C. d/b/a Midwestern Tel (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 Midwestern Services, L.C. d/b/a Midwestern Tel 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 Company has provided the following contact information to the Commission:

Midwestern Services, L.C. d/b/a Midwestern Tel
2751 North Ashland Avenue
Chicago, IL 60614

The Company is a Limited Liability Company registered with and described as “active” by the Missouri Secretary of State’s office. The Company’s registered agent is listed as:

John K. Egan
3809 Castleman
St. Louis, MO 63110

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 Midwestern Services, L.C. d/b/a Midwestern Tel, 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. As a result of an investigation performed in 2000, Staff believes the Company may no longer be in business.

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 certificates and tariffs. Therefore, Staff requests the Commission to cancel the certificates of service authority granted in Case No. TA-97-469 (for basic local telecommunications service) and TA-98-369 (for intrastate interexchange telecommunications service), as well as its tariffs, P.S.C. Mo. No. 1 and P.S.C. Mo. No. 2.

WHEREFORE, Staff now requests that the Commission open a complaint case pursuant to Section 386.390; and, after hearing, find that Midwestern Services, L.C. d/b/a Midwestern Tel 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 Midwestern Services, L.C. d/b/a Midwestern Tel granted in Case No. TA-97-469 (for basic local telecommunications service) and TA-98-369 (for intrastate interexchange telecommunications service), as well as its tariffs, P.S.C. Mo. No. 1 and P.S.C. Mo. No. 2.

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 26th day of February 2004.

/s/ David A. Meyer

Midwestern Services, L.C. d/b/a Midwestern Tel
2751 North Ashland Avenue
Chicago, IL 60614

John K. Egan
Registered Agent for Midwestern Services, L.C. d/b/a Midwestern Tel
3809 Castleman
St. Louis, MO 63110

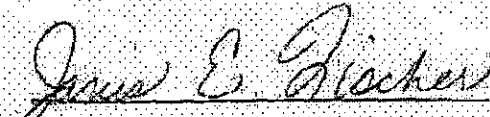
John Coffman, Esq.
Office of the Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

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 Midwestern Services, L.C. d/b/a Midwestern Tel.



Janis E. Fischer

STATE OF MISSOURI

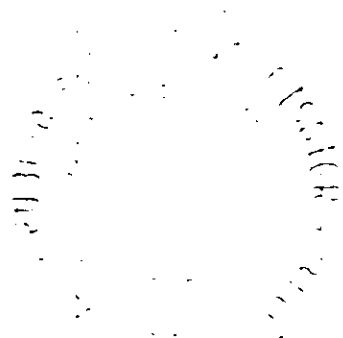
OFFICE OF THE PUBLIC SERVICE COMMISSION

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 1st day of Mar. 2004 .



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge



MISSOURI PUBLIC SERVICE COMMISSION

March 01, 2004

Case No. TC-2004-0435

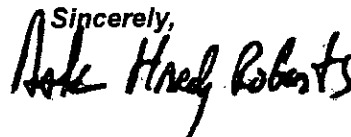
Dana K Joyce
P.O. Box 360
200 Madison Street, Suite 800
Jefferson City, MO 65102

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

Midwestern Tel
Legal Department
2751 North Ashland Avenue
St. Louis, MO 63110

John K. Egan
3809 Castleman
St. Louis, MO 63110

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

Sincerely,


Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge