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RSON CITY MO 65102

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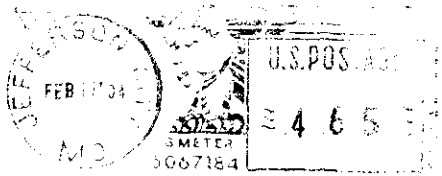

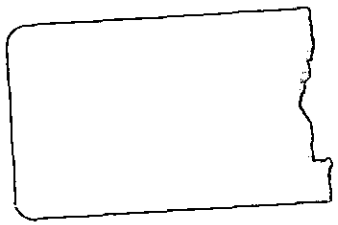

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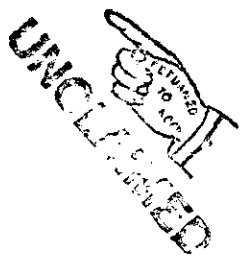
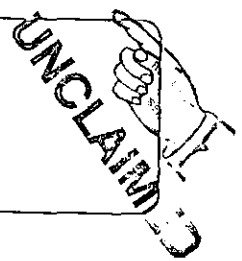
Missouri Public
Service Commission



TelePlus, Inc.
Legal Department
107 Dove Crest Drive
Boerne, TX 78006-7828



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2-11-04 TC-04-369

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:

TelePlus, Inc.
Legal Department
107 Dove Crest Drive
Boerne, TX 78006-7828

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) 7099 3220 0009 3699 7739

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-2004-0369**
TelePlus, Inc.,	)	
Respondent.	)	

NOTICE OF COMPLAINT

TelePlus, Inc.
107 Dove Crest Drive
Boerne, Texas 78006-7828
CERTIFIED MAIL

TelePlus, Inc.
c/o The Corporation Company, Registered Agent
7733 Forsyth Boulevard
Clayton, Missouri 63105
CERTIFIED MAIL

On February 6, 2004, the Staff of the Missouri Public Service Commission filed a complaint with the Commission against TelePlus, Inc. A copy of the complaint is enclosed. Under Commission Rule 4 CSR 240-2.070, TelePlus, Inc., has 30 days from the date of this notice to file an answer or to file notification that the complaint has been satisfied. TelePlus, Inc., 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
Secretary/Chief Regulatory Law Judge

(S E A L)

Dated at Jefferson City, Missouri,
on this 11th day of February, 2004.

Dippell, Senior 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-____
TelePlus, 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 TelePlus, Inc. (the "Company") for violation of the Commission's statutes and rules relating to annual report filings and annual assessment payments. In support of its complaint, Staff respectfully states as follows:

GENERAL ALLEGATIONS

1. Respondent TelePlus, 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-96-54 on October 6, 1995. TelePlus, Inc. has provided the following contact information to the Commission:

TelePlus, Inc.
107 Dove Crest Dr.
Boerne, TX 78006-7828

TelePlus, Inc.'s registered agent according to the records of the Missouri Secretary of State's Office is:

The Corporation Company
7733 Forsyth Blvd.
Clayton, MO 63105

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.

COUNT ONE

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 TelePlus, 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.

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...."

COUNT TWO

10. 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.

11. 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."

12. 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.

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

14. If the Company elected to pay on a quarterly basis, quarterly installments were due on July 15, 2002; October 15, 2002; and January 15, 2003. Thus, the Company is delinquent on at least a portion of its 2003 annual assessment.

15. 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.

16. The Company, as of the date of this pleading, has not paid its Fiscal Year 2003 assessment and therefore has not complied with the Commission's *Assessment Order.* See Affidavit of Dan Redel, attached to this Complaint as Exhibit B.

17. 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.

18. As part of the Commission *Order* in this case, the Staff requests that the Commission formally find that it may publicly release the amount of the overdue assessment. As the assessment is 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 THREE

19. 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.

20. 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."

21. 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.

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

23. 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.

24. 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.

25. 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 Dan Redel, attached to this Complaint as Exhibit B.

26. 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.

27. As part of the Commission *Order* in this case, the Staff requests that the Commission formally find that it may publicly release the amount of the overdue assessment. As the assessment is 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

28. 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).

29. 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 certificate and tariff, and therefore cancel the certificates of service authority of TelePlus, Inc., Inc. to provide interexchange telecommunications services and the accompanying tariff, P.S.C. Mo. No. 1.

PRAYER FOR RELIEF

WHEREFORE, Staff now requests that the Commission open a complaint case pursuant to Section 386.390; and, after hearing, find that TelePlus, Inc . failed, omitted, or neglected to file its 2002 Annual Report with the Commission as required by Missouri statute and Commission orders; for failure to pay its FY 2003 and 2004 annual assessments as so required: 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) and 386.570 and 386.590 (for failing to pay assessments); and order that the amount of the overdue assessment 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 find that the Company's default constitutes its consent for the Commission to cancel its certificate and tariff, and therefore cancel the certificate of service authority of TelePlus, Inc. to provide interexchange telecommunications services and the accompanying tariff, P.S.C. Mo. No. 1.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Bruce H. Bates
Bruce H. Bates
Associate General Counsel
Missouri Bar No. 35442

Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-7434 (Telephone)
(573) 751-9285 (Fax)
bruce.bates@psc.mo.gov (E-Mail)

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 6th day of February 2004.

/s/ Bruce H. Bates

TelePlus, Inc.
107 Dove Crest Dr.
Boerne, TX 78006-7828

The Corporation Company (Registered Agent)
7733 Forsyth Blvd.
Clayton, MO 63105

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 TelePlus, Inc.

Janis E. Fischer

Janis E. Fischer

Subscribed and sworn to before me this 6th 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 A

AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Dan Redel, Fiscal and Administrative Manager 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 Years 2003 and 2004 annual assessment from TelePlus, Inc.

Dan Redel

Subscribed and sworn to before me this 6th 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 B

STATE OF MISSOURI

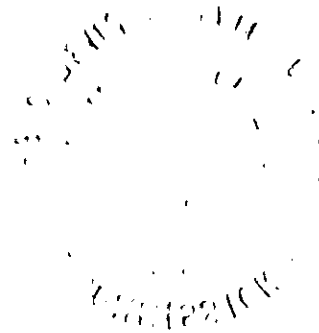
OFFICE OF THE PUBLIC SERVICE COMMISSION

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 11th day of Feb. 2004 .

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge



MISSOURI PUBLIC SERVICE COMMISSION

February 11, 2004

Case No. TC-2004-0369

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

TelePlus, Inc.
Legal Department
C/O The Corporation Company,
Registered Agent
7733 Forsyth Blvd.
Clayton, MO 63105

TelePlus, Inc.
Legal Department
107 Dove Crest Drive
Boerne, TX 78006-7828

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