

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	Case No. TC-2005-_____
)	
Suretel, Inc.,)	
)	
Respondent.)	

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and initiates its complaint pursuant to Section 386.390 RSMo. (2000) and 4 CSR 240-2.070, against Suretel, Inc. (the “Company”) for violation of the Commission’s statutes and rules relating to annual report submissions and annual assessment payments. In support of its complaint, Staff respectfully states as follows:

GENERAL ALLEGATIONS

1. The Commission granted Suretel, Inc. a certificate of service authority to provide basic local telecommunications services in Case No. TA-98-568 on October 6, 1998.
2. The company 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 RSMo. (2000).
3. The Company has provided the following contact information to the Commission:

Suretel, Inc.
5 North McCormick
Oklahoma City, OK 73127

Suretel, Inc.
P.O. Box 271690
Oklahoma City, OK 73127

Suretel, Inc.
P.O. Box 67090
Harrisburg, PA 17106-7090

The Company is an Oklahoma corporation as reflected by both offices of the Missouri and Oklahoma Secretaries of State. The Missouri Secretary of State administratively dissolved the Company on October 22, 2004 because it failed to file a correct and current annual report.

4. 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.

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

6. 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 RSMo. (2000).

COUNT ONE

7. Section 392.210.1 RSMo. (2000) states that telecommunications companies must “file an annual report with the Commission at a time and covering the yearly period fixed by the commission.”

8. 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.

9. On January 15, 2004, the Executive Director of the Commission, in compliance with Section 392.210.1, sent all regulated utilities, including Suretel, Inc., a letter notifying them of the requirement to file an annual report covering the calendar year 2003, 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 returned from the P.O. Box 271690, Oklahoma City, Oklahoma address. On this return, the U.S. Post Office noted an expired forwarding order and provided the Harrisburg, Pennsylvania address. *See para. 3 above.* The letter and form were sent to the Harrisburg address and were not returned.

10. 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 2003 Annual Report. See Affidavit of Janis Fischer, attached to this Complaint as Exhibit A.

11. 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... ."

12. The Commission's rule at 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 letter and accompanying form the Executive Director sent in January 2004, the Commission's General Counsel sent Suretel, Inc. a letter on

April 27, 2004 reminding them that the Company failed to file an annual report by the April 15th deadline and warning them that such failure to file will subject the Company to legal action under state law that allows a penalty of one hundred dollars for each day that it is late in filing. See Exhibit B.

COUNT TWO

13. 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.

14. Pursuant to Section 386.370, the Commission promulgated its *Assessment Order for Fiscal Year 2005* in Case No. AO-2004-0610, “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, 2004.”

15. As called for by the *Assessment Order* in Case No. AO-2004-0610, the Budget and Fiscal Services Department calculated the amount of the 2005 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 25, 2004. This letter was not returned by the U.S. Post Office.

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

17. If the Company elected to pay on a quarterly basis, quarterly installments were due on July 15, 2004; October 15, 2004; and January 15, 2005. Thus, the Company is delinquent on at least three quarters of its 2005 annual assessment.

18. On November 9, 2004, the Executive Director of the Commission sent a letter to an address that the Company had provided, informing the Company of its unpaid assessment for Fiscal Year 2005. This letter was not returned by the U.S. Postal Service.

19. The Company, as of the date of this pleading, has not paid its Fiscal Year 2005 assessment and therefore has not complied with the Commission's *Assessment Order*. See Affidavit of Helen Davis, attached to this Complaint as Exhibit C.

20. 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.

21. 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

22. 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).

23. Staff requests that the Commission take notice of the Company’s dissolved status since October 22, 2004 and find that the Company’s dissolution in Missouri constitutes its consent for the Commission to cancel its certificate and tariff, and therefore cancel the certificate of service authority of Suretel, Inc. to provide basic local telecommunications services and the accompanying tariffs, Mo. PSC No. 1 and Mo. PSC No. 2.

SERVICE OF COMPLAINT

24. Pursuant to Section 351.602.4 RSMo (2000), the Staff properly serves its Complaint on the office of the Missouri Secretary of State because of Suretel, Inc.’s recent administrative dissolution. However, the Staff will also provide gratuitous electronic and postal mail service on Mr. Mark Layton at Suretel, Inc., 5 N. McCormick, Oklahoma City, OK 73127 and Mark.Layton@chickasawireless.com. Mr. Layton’s name and position as the Company’s vice president are reflected in the 2003 annual registration filed by the Company with the Missouri Secretary of State’s Office.

PRAYER FOR RELIEF

WHEREFORE, Staff now requests that the Commission (1) open a complaint case pursuant to Section 386.390; and, after hearing, find that Suretel, Inc. failed, omitted, or neglected to file its 2003 Annual Report and pay its Fiscal Year 2005 annual assessment to the Commission as required by Missouri statute and Commission orders; (2) 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); (3) order that the amount of the overdue assessment may be publicly released; (4) take notice of the Company's October 22, 2004 dissolution in Missouri and find that the Company's dissolution constitutes its consent for the Commission to cancel its certificate and tariff, and (5) cancel the certificate of service authority of Suretel, Inc. to provide basic local telecommunications services and its accompanying tariffs, Mo. PSC No. 1 and Mo. PSC No. 2.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Robert S. Berlin

Robert S. Berlin
Associate 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 the following this 14th day of April 2005.

/s/ Robert S. Berlin

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

Mr. Mark Layton
Suretel, Inc.
5 N. McCormick
Oklahoma City, OK 73127
Mark.Layton@chickasawireless.com

Robin Carnahan
Missouri Secretary of State
Acting as Registered Agent for Suretel, Inc.
600 W. Main
Jefferson City, MO 65101

AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Janis E. Fischer, Utility Regulatory Auditor IV, first being duly sworn on my oath state that the Public Service Commission's records do not reflect the receipt of the 2003 Annual Report from Suretel, Inc.

Janis E. Fischer
Janis E. Fischer

Subscribed and sworn to before me this 14th day of April, 2005.
I am commissioned as a notary public within the County of
COLE, State of Missouri, and my commission expires on
07-01-2008.



D. Suzie Mankin
NOTARY PUBLIC
D. SUZIE MANKIN

Exhibit A



Commissioners

STEVE GAW
Chair

CONNIE MURRAY

ROBERT M. CLAYTON III

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.state.mo.us>

April 27, 2004

ROBERT J. QUINN, JR.
Executive Director

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law
Judge

DANA K. JOYCE
General Counsel

Suretel, Inc.
P.O. Box 271690
Oklahoma City, OK 73127

Dear Sir/Madam:

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 and warning that the Missouri Public Service Commission has not received from your company its required 2003 Annual Report as of the date of this letter.

If your company does not immediately file its report, it will be subject to legal action under state law for failure to submit an annual report on time. A utility that does not timely file its annual report is subject to a penalty of one hundred dollars for each day that it is late in filing its annual report.

Questions about the annual report form or its content may be submitted to:

Janis Fischer (573) 751-4257 or by email at Janis.Fischer@psc.mo.gov.

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

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

Sincerely,

Dana K. Joyce
General Counsel

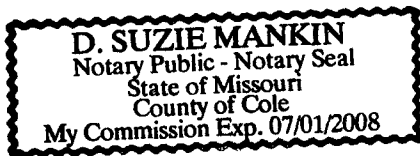
AFFIDAVIT

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 2005 annual assessment from Suretel, Inc.

Helen Davis
Helen Davis

Subscribed and sworn to before me this 14th day of April, 2005.
I am commissioned as a notary public within the County of
COLE, State of Missouri, and my commission expires on
07-01-2008.



D. Suzie Mankin
NOTARY PUBLIC
D. SUZIE MANKIN