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April 15, 2004

The Honorable Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

**FILED**

**APR 15 2004**

**Missouri Public  
Service Commission**

Re: Intelcom, Inc.; TC-2004-0377

Dear Judge Roberts:


Please find the original and eight copies of a Motion to Set Aside Order Granting Default and Canceling Certificate and Tariff for filing in the above matter.

Thank you very much for your attention to this matter.

Sincerely,

NEWMAN, COMLEY & RUTH P.C.

By:



Cathleen A. Martin  
cmartin@ncrpc.com

CAM:dmb

Enclosure

cc: Office of Public Counsel  
Robert S. Berlin  
Kassi Avion

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED

APR 15 2004

Missouri Public  
Service Commission

The Staff of the Missouri Public Service  
Commission, )

Complainant, )

Case No. TC-2004-0377

v. )

Intelcom, Inc., )

Respondent. )

**MOTION FOR ORDER SETTING ASIDE DEFAULT ORDER AND  
GRANTING LEAVE TO FILE ANSWER**

COMES NOW Intelcom, Inc. ("Intelcom"), by and through counsel, and respectfully requests that the Commission set aside its Order Granting Default and Canceling Certificate and Tariff which was issued by the Commission on April 6, 2004. In support thereof, Intelcom states the following to the Commission:

1. The Commission granted Intelcom a Certificate of Service Authority to provide interexchange telecommunications services in the State of Missouri on August 16, 1999 and approved its tariffs related to providing service under such certificate.
2. Intelcom has been and currently is providing interexchange telecommunication services in the State of Missouri under such certificate.
3. On February 10, 2004, the Staff of the Commission filed a complaint against

Intelcom alleging that Intelcom did not file its annual 2002 annual report and requesting authority to bring a penalty action it in circuit court against Intelcom for its failure to file its annual report.

4. On February 19, 2004, the Commission issued a Notice of Complaint ("Notice") to inform Intelcom of staff's complaint. Such Notice was sent to Intelcom at 4694 Cemetery Road #373, Hilliard, Ohio 43026 and to its registered agent, CSC Lawyers Inc. Service Co., P.O. Box 1069, Jefferson City, Missouri 65101. However, Intelcom did not receive the Notice of Complaint until just recently because it is no longer located at 4694 Cemetery Road #373, Hilliard, Ohio 43026 and is in fact now located at Intelcom, Inc., 1335 Dublin Road, Suite 200-A, Columbus, Ohio 43215.

5. Upon learning of the staff's complaint, Intelcom's President, Kassi Avion, contacted Janis Fischer, the utility regulatory auditor who has been assigned to this matter, and provided her with Intelcom's 2002 and 2003 annual report by facsimile and regular mail on March 29, 2004.

6. Intelcom has today just secured the undersigned counsel to defend it in this complaint proceeding and to respond to the Commission's default order.

7. The Commission has the ability to set aside its default order from April 6, 2004 in this matter as such order does not become effective until April 16, 2004.

8. Setting aside the default order and allowing Intelcom to defend itself in this complaint proceeding would not be detrimental to the public interest. Intelcom's delay in responding to the complaint was not intentional or the result of willful disobedience to a Commission rule. Thus, setting aside the default order would be just and proper under the circumstances.

WHEREFORE, Intelcom, Inc. requests that the Commission set aside its Order Granting Default and Canceling Certificate and Tariff issued on April 6, 2004; grant Intelcom at least twenty (20) days from the date of such order to file an answer to Staff's Complaint in this matter and for such other and further relief as the Commission deems just and proper.

Respectfully submitted,

NEWMAN, COMLEY & RUTH P.C.

By:



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Attorneys for Respondent

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was hand-delivered, to Commission Staff, c/o Robert S. Berlin, P.O. Box 360, Jefferson City, MO 65102, and the Office of Public Counsel, c/o John Coffman, P.O. Box 7800, Jefferson City, Missouri 65102 at on this 15<sup>th</sup> day of April, 2004.

