

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

The Staff of the Missouri Public Service Commission, )  
)  
)  
Complainant, )  
)  
)  
v. )  
)  
PowerComm Broadband, LLC, )  
)  
)  
Respondents )

**Case No. TC-2018-0281**

**AMENDED STAFF COMPLAINT**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Amended Complaint* in this matter hereby states:

**INTRODUCTION**

1. This matter concerns the failure of the Respondents to secure proper certification to provide telecommunications services to customers in the area of Excelsior Springs, Missouri. Staff’s prior *Complaint* filed in this matter featured an incorrect reference in its “wherefore” clause, addressing the company PhoneHost and not Powercomm Broadband, LLC, d/b/a New Dawn Fiber. This *Amended Complaint* corrects that mistake.

**PARTIES**

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Chief Staff Counsel as authorized by Commission Rule 4 CSR 240-2.070(1).

3. Respondent PowerComm Broadband, LLC, d/b/a New Dawn Fiber, is a Missouri limited liability company formed in 2014. It is in good standing. Its registered office is located at 1902 West Jesse James Road, Excelsior Springs, Missouri, 64024. Its registered agent is William J. Greim, Jr., 1902 West Jesse James Road, Excelsior Springs, Missouri, 64024. Respondent PowerComm Broadband, LLC, does not have a certificate of service authority from this Commission authorizing it to provide telecommunications services in the state of Missouri.

### **JURISDICTION**

4. On information and belief, the Respondent is engaged in the business of offering telecommunications services as defined in § 386.020(54), via telecommunications facilities that it owns, operates, or controls, within the state of Missouri. Therefore, pursuant to § 386.020(52), Respondent is a telecommunications company and, pursuant to § 386.020(43), a public utility subject to regulation by this Commission. Section 386.250(2).

5. Section 386.390.1, RSMo., authorizes the Commission to hear and determine complaints:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission . . . .

6. The Commission has by rule authorized the Staff Counsel's Office to bring complaints on behalf of the Staff: "A complaint may also be filed by . . . the commission staff through the staff counsel . . . ."

### **Authority**

7. Section 386.570.1, RSMo., provides for a penalty between \$100.00 to \$2,000.00, per offense, for "[a]ny corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission . . . ." Each day that a continuing violation persists is counted as a separate offense. In the case of a corporate respondent, the acts and omissions of its officers, agents and employees are deemed to be the acts and omissions of the corporation. All penalties are cumulative.

8. Telephone companies have a duty to provide sufficient facilities pursuant to Section 392.130, RSMo, and to provide services which are adequate and in all respects just and reasonable under Section 392.200, RSMo.

9. Any company offering telecommunications service must be certificated or registered by the Commission prior to offering or selling telecommunications services. 4 CSR 240-28.020(1). The procedure for a telecommunications utility to acquire a certificate of convenience and necessity is outlined in 4 CSR 240-28.030(4).

10. The Commission's General Counsel can bring an action to seek penalties against a telecommunications services provider before a circuit court for any violation of the applicable statutes or Commission rules.

## **Background**

11. On April 5, 2018, Staff was informed by a customer of PowerComm Broadband, LLC, d/b/a New Dawn Fiber that he had not had phone service for four days. Staff has received notice that service has been restored as of the date of this filing.

12. Staff spoke to Kennis Mann, who identified himself as the owner of New Dawn Fiber, which he expressed services at least 96 phone lines.

13. Mr. Mann clarified that he purchases his customers' phone numbers/services through PhoneHost Communications, LLC, which is the subject of a separate filing before this Commission.

14. Staff searched its records and found no certificate of convenience and necessity for telecommunications services granted to Powercomm Broadband, Inc. d/b/a New Dawn Fiber by this Commission. Powercomm Broadband does have an active certificate for video services.

## **REQUEST FOR RELIEF**

15. Staff now asks this Commission to issue an order requiring Powercomm Broadband d/b/a New Dawn Fiber to follow the Commission's procedure for obtaining a certificate of convenience and necessity pursuant to 4 CSR 240-28.030(4).

16. Staff also asks this Commission to order its General Counsel to seek penalties against Powercomm Broadband d/b/a New Dawn Fiber, through an action before the circuit court for its violation of 4 CSR 240-28.020(1).

**WHEREFORE**, Staff prays that the Commission will issue an order against Powercomm Broadband, LLC, d/b/a New Dawn Fiber to file an application for a

certificate of convenience and necessity to offer telecommunications services in Missouri pursuant to 4 CSR 240-28.030(4); order its General Counsel to seek penalties against Powercomm Broadband, LLC, d/b/a New Dawn Fiber for its violation of 4 CSR 240-28.020(1); and grant such other and further relief as the Commission considers just in the circumstances.

Respectfully Submitted,

**/s/ Whitney Payne**

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 10th day of April, 2018, to all counsel of record.

**/s/Whitney Payne**