

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

The Staff of the Missouri Public Service Commission,)	
)	
)	
v.)	File No. TC-2018-0281
)	
PowerComm Broadband, LLC,)	
d/b/a New Dawn Fiber,)	
)	
)	
Respondent.)	

NOTICE OF CONTESTED CASE AND ORDER DIRECTING FILING

Issue Date: April 10, 2018

Effective Date: April 10, 2018

On April 6, 2018, the Commission's Staff filed the complaint, a copy of which is attached. The filing of a complaint requires the Commission to set a hearing.¹ The requirement of a hearing on such issues signifies a contested case.² A contested case is a formal hearing procedure, but it allows for waiver of procedural formalities and a decision without an evidentiary hearing, including by stipulation and agreement.³ The Commission's regulations provide for discovery at 4 CSR 240-2.090.

THE COMMISSION ORDERS THAT:

1. PowerComm Broadband, LLC, d/b/a New Dawn Fiber shall file an answer to the complaint no later than May 10, 2018.

¹ Section 392.240, RSMo 2016.

² Section 536.010(4), RSMo 2016.

³ Section 536.060, RSMo 2016; 4 CSR 240-2.115.

2. The commission's data center shall serve a copy of this order and the complaint upon PowerComm Broadband, LLC, d/b/a New Dawn Fiber by certified mail, postage prepaid, at:

PowerComm Broadband, LLC, d/b/a New Dawn Fiber
1902 West Jesse James Road
Excelsior Springs, Missouri 64024.

3. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff". The signature is fluid and cursive.

Morris L. Woodruff
Secretary

Daniel Jordan, Senior Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 10th day of April, 2017.

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

The Staff of the Missouri Public)
Service Commission,)
)
Complainant,)
)
v.)
)
PowerComm Broadband, LLC,)
d/b/a New Dawn Fiber,)
)
Respondents)

Case No. TC-2018-_____

STAFF COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *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.

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 PhoneHost Communications, LLC, 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

Whitney Payne
Assistant Staff Counsel
Missouri Bar No. 64078
Attorney for the Staff of the
Missouri Public Service Commission
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Jefferson City, MO 65102
(573) 751-8706 (Telephone)
(573) 751-9285 (Fax)
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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 6th day of April, 2018, to all counsel of record.

/s/Whitney Payne

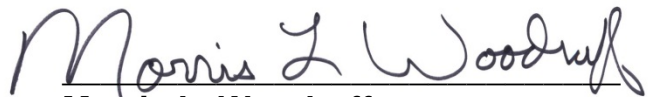
STATE OF MISSOURI

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 10th day of April 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

April 10, 2018

File/Case No. TC-2018-0281

**Missouri Public Service
Commission**

Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel

Hampton Williams
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opc@psc.mo.gov

New Dawn Fiber

Legal Department
1902 W. Jesse James Rd.
Excelsior Springs, MO 64024
kennis.mann@powercommmbb.com

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

A handwritten signature in dark ink, reading "Morris L. Woodruff". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.