

PUBLIC SERVICE COMMISSION
P O BOX 360
JEFFERSON CITY MO 65102

MO 418-1183 (12-91)

FILED

FEB 17 2004

Missouri Public
Service Commission

- ☐ Inadequate Address
- ☐ Moved, Last No Address
- ☐ Undelivered ☐ Refused
- ☐ Attempted - Not Known
- ☐ No Such Street ☐ Vacant
- ☐ No Such Number
- ☒ No Forwarding Address
- ☐ No Forwarding Address
- ☐ No Forwarding Address
- ☐ No Forwarding Address



U.S. Network Services, Inc.
C/o David A. Vorbeck Registered Agent
656 S.E. Bayberry Lane, Ste. 104
Lee's Summit, MO 64063



7099 3220 0009 3699 7708



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:

U.S. Network Services, Inc.
C/o David A. Vorbeck Registered Agent
656 S.E. Bayberry Lane, Ste. 104
Lee's Summit, MO 64063

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 7708

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-N-1540

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

The Staff of the Missouri Public Service
Commission,

Complainant,

v.

U.S. Network Services, Inc.,

Respondent.

Case No. TC-2004-0372

NOTICE OF COMPLAINT

U.S. Network Services, Inc.
2722 Eastlake Avenue East
Seattle, Washington 98102

CERTIFIED MAIL

U.S. Network Services, Inc.
c/o David A. Vorbeck, Registered Agent
656 S.E. Bayberry Lane, Suite 104
Lee's Summit, Missouri 64063

CERTIFIED MAIL

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

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(SEAL)

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.)
)
U.S. Network Services, Inc.)
)
Respondent.)

Case No. TC-2004-

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 U.S. Network Services, Inc. (the "Company") for violation of the Commission's statutes and rules relating to annual report filings. In support of its complaint, Staff respectfully states as follows:

GENERAL ALLEGATIONS

1. Respondent U.S. Network Services, 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-98-587 on August 12, 1998. U.S. Network Services, Inc. has provided the following contact information to the Commission:

U.S. Network Services, Inc.
2722 Eastlake Ave. East
Seattle, WA 89102

U.S. Network Services, Inc.'s registered agent according to the records of the Missouri Secretary of State's Office is:

David A. Vorbeck
656 S.E. Bayberry Lane, Suite 104
Lees Summit, MO 64063

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 U.S. Network Services, 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. 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).

11. 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 U.S. Network Services, Inc., Inc. to provide interexchange telecommunications services and the accompanying tariff, P.S.C. Mo. Tariff 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 U.S. Network Services, Inc. failed, omitted, or neglected to file its 2002 Annual Report with the Commission as required by Missouri statute and Commission orders; and 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).

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 U.S. Network Services, Inc. to provide interexchange telecommunications services and the accompanying tariff, P.S.C. Mo. Tariff 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 9th day of February 2004.

/s/ Bruce H. Bates

U.S. Network Services, Inc.
2722 Eastlake Ave. East
Seattle, WA 89102

David A. Vorbeck (Registered Agent)
656 S.E. Bayberry Lane, Suite 104
Lees Summit, MO 64063

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

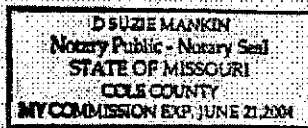
AFFIDAVIT

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 U.S. Network Services, Inc.

Janis E. Fischer
Janis E. Fischer

Subscribed and sworn to before me this 9th day of February, 2004.



D. Suzie Mankin
NOTARY PUBLIC

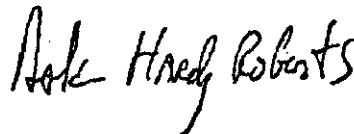
Exhibit A

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
Secretary/Chief Regulatory Law Judge

MISSOURI PUBLIC SERVICE COMMISSION

February 11, 2004

Case No. TC-2004-0372

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

U.S. Network Services, Inc.
Legal Department
2722 Eastlake Ave. East
Seattle, WA 98102

U.S. Network Services, Inc.
David Vorbeck
Registered Agent
656 S.E. Bayberry Lane, Ste. 104
Lee's Summit, MO 64063

Enclosed find a certified copy of a NOTICE in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**