

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

Staff of the Public Service Commission of the State)	
of Missouri,)	
)
Complainant,)	
v.)	Case No. TC-2007-_____
)
American Fiber Network, Inc.,)	
)
Respondent.)	

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (Staff), pursuant to section 386.390.1 RSMo. 2000 and Commission Rule 4 CSR 240-2.070 and for its complaint against American Fiber Network, Inc. (American), states:

1. Section 386.390.1 RSMo. provides that a “[c]omplaint may be made by the commission of its own motion, ... or by...any...person...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..., in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission [.]”

2. Commission Rule 4 CSR 240-2.070(1) provides that the “commission staff through the general counsel” may file a complaint.

3. American is a telecommunications company certificated to provide basic local telecommunications service in Missouri by the Missouri Public Service Commission (Commission) (Case TA-2000-305), and is a telecommunications company as defined by section 386.020 (51) RSMo. Supp. 2005.

4. American’s business address is 9401 Indian Creek Parkway, Suite 140, Overland Park, Kansas 66210.

5. The Missouri registered agent for American is C T Corporation System, 120 South Central Avenue, Clayton, Missouri 63105.

6. American is offering and providing basic local exchange telecommunications service in Missouri, in the exchanges serviced by AT&T Missouri, CenturyTel Missouri, Spectra, and Embarq's MCA St. Louis and Kansas City exchanges.

7. Commission Rule 4 CSR 240-3.550(5), requires that each company which provides basic local telecommunications service is required to "file with the commission no later than forty-five days following the end of each quarter a report, referred to as the quarterly report [or Quarterly Quality of Service Report], of the quality of the telephone service provided to its customers."

8. American has not filed Quarterly Quality of Service Reports in compliance with 4 CSR 240-3.550(5).

9. After numerous conversations attempting to bring American into compliance with reporting requirements, undersigned counsel sent a letter dated March 7, 2007, demanding that American submit their Quarterly Quality of Service Reports in compliance with 4 CSR 240-3.550(5) by close of business on March 21, 2007. To this date, American has not responded.

10. Section 386.570(1) RSMo. provides:

Any 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 in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

11. Section 386.570(2) RSMo. provides:

Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a

separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

12. Section 386.600 RSMo. provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

13. 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 [Commission] 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).

WHEREFORE, Staff requests that the Commission:

- a) find that American Fiber Network, Inc. has failed to file Quarterly Quality of Service Reports pursuant to Commission Rule 4 CSR 240-3.550(5) for every quarter applicable, and
- b) authorize the General Counsel of the Commission to bring an action in Circuit Court to recover from American Fiber Network, Inc. the maximum statutory forfeiture allowed by section 386.570 RSMo. for each separate, distinct, and continuing violation.

Respectfully submitted,

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