

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF THE FAILURE OF AIRNEX)
COMMUNICATIONS, INC. TO FILE REQUIRED) CASE NO. 2011-00331
REPORTS)

ORDER

On October 12, 2011, the Commission ordered Airnex Communications, Inc. ("Airnex") to show cause why it should not be penalized for failing to comply with KRS 278.140. A hearing in this matter was held on October 27, 2011. No representative appeared on behalf of Airnex.

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Airnex is a Kentucky corporation that transmits or conveys over wire, in air, or otherwise, messages by telephone for the public for compensation in the Commonwealth of Kentucky. It is therefore a utility subject to Commission jurisdiction.¹
2. KRS 278.140 requires each utility to file, on or before March 31 of each year, a report of its gross earnings of receipts derived from intrastate business for the preceding calendar year.
3. On or about December 14, 2007, the Commission mailed to Airnex, at its address of record, two copies of the Commission's standard form for report of gross

¹ KRS 278.010(3)(e).

earnings derived from intrastate business and a letter of instruction to complete the forms for the 2007 calendar year operations.

4. On or about December 15, 2010, the Commission mailed to Airnex, at its address of record, two copies of the Commission's standard form for report of gross earnings derived from intrastate business and a letter of instruction to complete the forms for the 2010 calendar year operations.

5. As of April 1, 2011, Airnex had not filed the Long Distance Carrier ("LDC") report of gross earnings derived from intrastate business for the 2007 or 2010 calendar year operations nor requested an extension of time in which to make such filing.

6. As of the date of this Order, Airnex has not filed the LDC report of gross earnings derived from intrastate business for its 2007 or 2010 calendar year operations.

7. Where the act which a utility is required to do is merely clerical in nature, willfulness or deliberate intent can be inferred from the fact of noncompliance.²

8. Airnex has willfully failed to submit reports required by KRS 278.140.

9. KRS 278.990(1) provides that any utility that willfully violates any provision of KRS Chapter 278 or any regulation promulgated pursuant to KRS Chapter 278 or fails to perform any duty imposed upon it under those sections shall be subject to a civil penalty not less than \$25 and not more than \$2,500.

10. Airnex should be assessed a penalty of \$2,500 for its willful failure to comply with KRS 278.140.

² See *Re Dyke Water Company*, 55 PUR3d 342 (Cal. P.U.C. 1964).

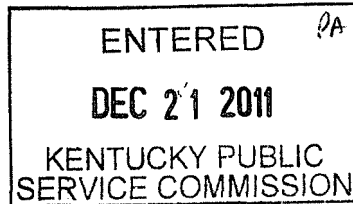
IT IS THEREFORE ORDERED that:

1. Airnex is assessed a penalty of \$2,500 for its willful failure to comply with KRS 278.140.

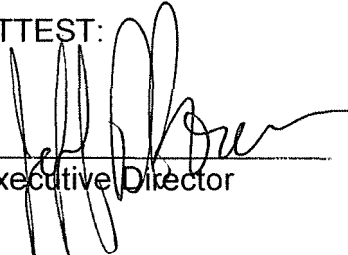
2. Airnex shall pay the assessed penalty within 14 days of the date of this Order. Payment shall be made by certified check or money order made payable to "Kentucky State Treasurer" and shall be mailed or delivered to the Office of General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, P. O. Box 615, Frankfort, Kentucky 40602-0615.

3. Within 20 days of the date of this Order, Airnex shall file with the Commission completed LDC reports of gross earnings derived from intrastate business for its 2007 and 2010 calendar year operations.

By the Commission



ATTEST:


Executive Director

Case No. 2011-00331

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