



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

March 5, 2019

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation  
and Enforcement v. NECC Telecom, Inc.  
Docket No. C-2017-2633997

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's Motion for Default Judgment in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Myers", written over a horizontal line.

Kourtney L. Myers  
Prosecutor  
PA Attorney ID No. 316494

Prosecutor for the Bureau of  
Investigation and Enforcement

Enclosures

cc: As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement,  
Complainant

v.

NECC Telecom, Inc.,  
Respondent

Docket No. C-2017-2633997

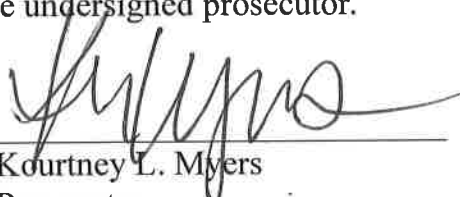
**NOTICE TO PLEAD**

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) has filed a Motion for Default Judgment in the above-captioned matter, pursuant to the Commission’s regulations at 52 Pa. Code § 5.103. You are hereby notified to file a written response within twenty (20) days of the service of the Motion, consistent with 52 Pa. Code § 5.61.

Your Answer must be verified, pursuant to 52 Pa. Code § 1.36, and the original sent to:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Additionally, you must serve a copy on the undersigned prosecutor.

  
\_\_\_\_\_  
Kourtney L. Myers  
Prosecutor  
PA Attorney ID No. 316494

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 705-4366  
[komyers@pa.gov](mailto:komyers@pa.gov)

Dated: March 5, 2019

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement,  
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Docket No. C-2017-2633997

**MOTION FOR DEFAULT JUDGMENT**

NOW COMES the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E"), by its prosecuting attorneys, and files this Motion for Default Judgment against NECC Telecom, Inc. ("Respondent") pursuant to Section 5.103 of the Commission's regulations, 52 Pa. Code § 5.103. In support thereof, I&E respectfully represents as follows:

1. I&E commenced this action on November 16, 2017 by filing a Complaint.
2. On November 16, 2017, the Complaint was served by certified mail to Respondent at 4969 US Highway 42, Suite 2700, Louisville, KY 40222.
3. On November 28, 2017, the Complaint was returned to the Commission by the United States Postal Service and was marked as "Return to Sender" with a forwarding address for Respondent at P.O. Box 437017, Louisville, KY 40253-7017.
4. On November 30, 2017, the Complaint was again served to Respondent by certified mail at P.O. Box 437017, Louisville, KY 40253-7017.
5. Commission records dated March 22, 2018 indicate that the Complaint mailed to Respondent on November 30, 2017 was lost in transit.

6. On March 23, 2018, the Complaint was again served to Respondent by certified mail at P.O. Box 437017, Louisville, KY 40253-7017.

7. On April 17, 2018, the Complaint was returned to the Commission by the United States Postal Service and was marked as "Return to Sender" with a forwarding address for Respondent at 1607 East Big Beaver Road, Suite 300, Troy, MI 48083-2069.

8. On April 23, 2018, the Complaint was again served to Respondent by certified mail at 1607 East Big Beaver Road, Suite 300, Louisville, KY 40253-2069.

9. On May 9, 2018, the Complaint was returned to the Commission by the United States Postal Service and was marked as "Return to Sender; Not Deliverable as Addressed; Unable to Forward."

10. Since the Commission was unable to serve Respondent at its last known mailing address, I&E published the Complaint in the *Pennsylvania Bulletin* on September 8, 2018 pursuant to the Commission's regulation at 52 Pa. Code § 1.53(e) (related to alternative service). *See* 48 Pa. Bull. 5695 (September 8, 2018).

11. Attached to the Complaint was a Notice advising Respondent that it must file an Answer within twenty (20) days.

12. The Notice also advised Respondent that if it failed to answer the Complaint, I&E would request that the Commission issue an Order imposing the penalty set forth in the Complaint.

13. Respondent did not file an Answer to the Complaint.

14. Pursuant to Section 5.61(c) of the Commission's regulations, a Respondent who fails to file an Answer to a Complaint within the 20-day response period may be

deemed in default, and the relevant facts stated in the Complaint may be deemed admitted. 52 Pa. Code § 5.61(c).

15. The Commonwealth Court has upheld the Commission's authority to sustain complaints that are not answered within twenty days. *See Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978).

16. Respondent did not pay the outstanding assessment balance of \$12 for the July 1, 2016 to June 30, 2017 Fiscal Year ("2016-2017 Fiscal Year") or the civil penalty of \$50<sup>1</sup> that was sought in the Complaint for Respondent's failure to timely pay the assessment.

17. I&E respectfully requests that the Commission enter a Default Order against Respondent that:

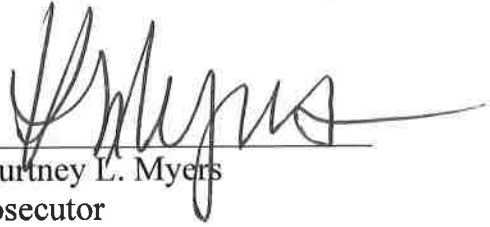
- a. Directs Respondent to pay a total of \$62, which consists of its outstanding assessment of \$12 for the 2016-2017 Fiscal Year and the requested civil penalty of \$50, within thirty (30) days of the entry date of the Commission's Order;
- b. Directs the Bureau of Technical Utility Services to cancel Respondent's Certificate of Public Convenience at A-311209 if Respondent fails to pay the total set forth in subparagraph (a), above, within thirty (30) days of the entry date of the Commission's Order; and
- c. Directs the Bureau of Administrative Services, Assessment Section, to refer the matter to the Pennsylvania Office of Attorney General for collection of the total set forth in subparagraph (a), above, if

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<sup>1</sup> This civil penalty is based on a review of Respondent's history of compliance with the Public Utility Code and Commission regulations and orders for three years prior to the date that I&E filed its Complaint in this matter, the need to deter future violations, and prior Commission decisions in similar situations pursuant to 52 Pa. Code §§ 69.1201(c)(6), (8), and (9). Due to Respondent's acceptable compliance history, I&E requested that Respondent pay a civil penalty of \$50, which is 15% of Respondent's outstanding assessment related to the 2016-2017 Fiscal Year or \$50, whichever is greater.

Respondent fails to pay that total within thirty (30) days of the entry date of the Commission's Order.

Respectfully submitted,



Kourtney L. Myers  
Prosecutor  
PA Attorney ID No. 316494

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
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Date: March 5, 2019

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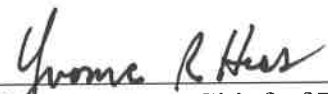
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Docket No. C-2017-2633997

**VERIFICATION**

I, Yvonne Hess, Chief of Finance and Assessments, Bureau of Administrative Services, Finance and Assessment Section, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: March 5, 2019

  
\_\_\_\_\_  
Yvonne Hess, Chief of Finance and Assessments  
Finance and Assessment Section  
Bureau of Administrative Services  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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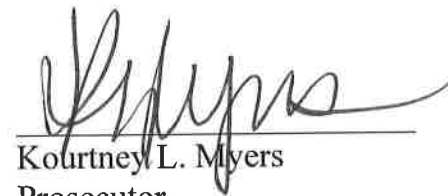
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### CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Notification by First Class Mail:

Daniel Popa, President  
NECC Telecom, Inc.  
4969 US Highway 42  
Suite 2700  
Louisville, KY 40222



Kourtney L. Myers  
Prosecutor  
PA Attorney ID No. 316494

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
P.O. Box 3265  
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Dated: March 5, 2019