

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF AIRNEX)
COMMUNICATIONS, INC.'S FAILURE TO)
TIMELY PAY THE GROSS RECEIPTS TAX)
)
)
)**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
FINAL ORDER; NOTICE OF
ENTRY OF FINAL ORDER**

TC12-006

On January 5, 2012, the Public Utilities Commission (Commission) issued an Order for and Notice of Show Cause Hearing against Airnex Communications, Inc. (Company) for failure to timely pay the gross receipts tax. The hearing was held as scheduled on January 30, 2012, at 2:30 P.M., in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The reason for the hearing was to give Company an opportunity to show cause why the Commission should not revoke its Certificate of Authority, or other specified actions, for failure to pay the gross receipts tax as required by SDCL 49-1A-1. No representative of Company appeared at the hearing. After hearing the testimony, the Commission voted unanimously to revoke Company's Certificate of Authority for failure to pay the gross receipts tax.

The Commission, having heard the testimony presented at the hearing, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Company is a telecommunications company holding a Certificate of Authority, issued by this Commission, to provide telecommunications services in South Dakota.
2. Cindy Kemnitz, Finance Manager for the Commission, sent letters to Company on June 23, 2011, August 17, 2011, and September 26, 2011, requesting payment of the gross receipts tax as authorized by SDCL 49-1A-1. She testified that Company never paid the gross receipts tax.
3. A copy of the Order for and Notice of Show Cause Hearing was sent by certified mail to Company on January 5, 2012.
4. No representative of Company appeared at the hearing to show cause why the Commission should not revoke its Certificate of Authority.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL 49-1A-3, 49-1A-4, 49-1A-5, 49-1A-6, and 49-31-3.
2. Pursuant to 49-1A-3, the Commission assesses a tax of .0015 or \$250, whichever is greater, on the annual intrastate gross receipts received by a telecommunications company from the company's customers within the state of South Dakota. Pursuant to 49-1A-5, the tax is due on July fifteenth of each year.

3. Company has failed to pay the gross receipts tax.

4. The Commission has the authority, under SDCL 49-31-3, to suspend or revoke a Certificate of Authority granted to a company for a willful violation of the laws of this state. Based on the failure of Company to timely pay the gross receipts tax in violation of 49-1A-5, the Commission revokes Company's Certificate of Authority.

Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore

ORDERED, that the Certificate of Authority granted to Company by this Commission is hereby revoked and any order, certificate or other document evidencing the Certificate of Authority shall be null and void as of the date of this order.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 6th day of February, 2012. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 6th day of February, 2012.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Joy Dainy</u>
Date:	<u>2-6-12</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Chris Nelson

CHRIS NELSON, Chairman

Kristie Feigen

KRISTIE FIEGEN, Commissioner

Gary Hanson

GARY HANSON, Commissioner