

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Ellen Gavin	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendraye	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Complaint of the
Minnesota Department of Commerce Against
Business Entities That Do Business in
Minnesota as The Minnesota Phone Company
Regarding Lack of Authority to Operate in
Minnesota

ISSUE DATE: December 23, 2002

DOCKET NO. P-6164/C-02-1383

ORDER DIRECTING COMPLIANCE WITH
FILED AGREEMENT

PROCEDURAL HISTORY

On October 8, 2002, the Minnesota Department of Commerce (the Department) filed a complaint against the following entities doing business in Minnesota as The Minnesota Phone Company

- # Alticom, Inc., f/k/a Eastern Telephone, Inc., a Massachusetts Corporation;
- # OnSystems Technology, LLC, a Colorado limited liability company;
- # OnSystems Technology, LLC, a Minnesota limited liability company;
- # Mile High Telecom Partners, LLP, a Colorado limited liability partnership; and
- # The Minnesota Phone Company Financial Group, LLP, a Minnesota limited liability partnership.

On October 11, 2002, the Commission issued a Notice of Complaint, Opportunity to Answer, and Commission Meeting.

The Commission met on October 24, 2002 to consider this matter.

On October 28, 2002, AltiComm, Inc., The Minnesota Phone Company Financial Group; and Mile High Telecom Partners, LLP, and the Department submitted a written agreement which the parties characterized as terms of an Order recommended by the named parties.

FINDINGS AND CONCLUSIONS

I. THE DEPARTMENT'S COMPLAINT

In its complaint, the Department alleged that several companies have operated in Minnesota as The Minnesota Phone Company: 1) Alticomm, Inc., f/k/a Eastern Telephone, Inc., a Massachusetts Corporation; 2) OnSystems Technology, LLC, a Colorado limited liability company; 3) OnSystems Technology, LLC, a Minnesota limited liability company; 4) Mile High Telecom Partners, LLP, a Colorado limited liability partnership; and 5) The Minnesota Phone Company Financial Group, LLP, a Minnesota limited liability partnership.

As to each of these companies, the Department requested that the Commission find as follows:

1. that Alticomm, Inc., f/k/a Eastern Telephone, Inc., has been knowingly and intentionally operating without authority since March 1, 2001;
2. that OnSystems Technology, LLC (Colorado) and OnSystems Technology, LLC (Minnesota), Mile High Telecom Partners, LLP, and The Minnesota Phone Company Financial Group, LLP, a/k/a The Minnesota Phone Company, LLP have been knowingly and intentionally operating without authority since June 24, 2002;
3. that these companies are in violation of Minn. Stat. § 237.16, Subd.1(b) and Minn. Stat. § 237.16, Subd. 4 for providing service without a certificate of authority and in violation of Minn. Stat § 237.07 for not filing tariffs for Commission approval; and
4. that in addition to the preceding violations Eastern Telephone n/k/a Alticomm, Inc. has violated Minn. Stat. § 237.23 by failing to obtain consent to transfer of property.

Based on those findings, the Department requested that the Commission impose penalties in the amount of \$10,000 per day per violation or direct that The Minnesota Phone Company produce evidence to show why it lacks the ability to pay such a penalty.

The Department also sought temporary relief (pending resolution of the dispute) pursuant to Minn. Stat. § 237.462, Subd. 7. The Department requested an Order directing

- The Minnesota Phone Company to immediately stop soliciting customers in Minnesota;
- The Minnesota Phone Company to permit all current customers to be switched to the carrier of their choice;

- The Minnesota Phone Company to file a refund plan no later than November 11, 2002 detailing all charges billed to the customers; and
- all local exchange companies to reject any wholesale orders for resold customers listed as customers of ServiSense.com¹, or any of the above, entities until these entities have obtained fully operational certificates of authority from the Commission.

II. DISCUSSION BEFORE THE COMMISSION

None of the respondents filed responses to the Department's complaint. However, at the hearing, several of the named telephone companies were present: AltiComm, Inc., The Minnesota Phone Company Financial Group; and Mile High Telecom Partners, LLP.

After extensive discussion at the hearing, the Department and the above-named companies described for the Commission and agreed to submit in writing an agreement on how they proposed to proceed in this matter.

III. THE PARTIES' AGREEMENT

On October 28, 2002, the parties submitted their agreement in writing, which the parties characterized as terms of an Order recommended by the named parties: AltiComm, Inc., The Minnesota Phone Company Financial Group, Mile High Telecom Partners, LLP, and the Department.

The parties proposed the following eight (8) terms:

1. AltiComm, Inc. (AltiComm) will go forward to complete the filings needed to make the current "conditional" local resale certificate of authority of ServiSense.com, Inc. (ServiSense) an "operational" authority. AltiComm and the Department believe that AltiComm has made all filings, with the filing of the

¹ As stated in the Department's Complaint, ServiSense.com, Inc. is the company that obtained a conditional certificate of authority to provide local exchange service from the Commission in an Order issued October 6, 2000 in Docket No. P-5916/NA-00-815, did not fulfill the requirements imposed by the Commission in that Order, and did not, therefore, obtain an operational certificate of authority to operate in Minnesota. As further related in the Department's Complaint, ServiSense filed a voluntary petition for relief under Chapter 11 on August 20, 2001 and on January 31, 2002 the bankruptcy court authorized the transfer of almost all of ServiSense.com, Inc.'s assets under an Asset Purchase Agreement (apparently including ServiSense.com's conditional certificate of authority to provide local exchange service in Minnesota) to Eastern Telephone, Inc. n/k/a Alticom, Inc., a named respondent in the Department's Complaint.

revised, updated tariff made under cover of letter dated August 5, 2002, and with the filing of its 911 Plan. The Department will expedite review of the tariff filing, and notify AltiComm promptly of any deficiencies in that filing, and if the Department believes any additional filings are due in order to make the local resale certificate operational.

2. No Respondent will solicit or acquire on and after this date any customers for service in Minnesota unless the Respondent has received an unconditional (operational) certificate of authority from the Minnesota Public Utilities Commission to offer and provide the service in the State of Minnesota.

3. No Respondent shall bill any customer for telephone services unless the Respondent has received an unconditional (operational) certificate of authority from the Commission to offer and provide the service in the State of Minnesota.

4. Any Respondent in possession of any payments for telephone services of "The Minnesota Phone Company" shall return the payment amount to the customer by mailing made by November 1, 2002. Any payments received hereafter will be returned to customers by mailing made within one week of receipt until the services being billed are provided pursuant to an operational certificate of authority.

5. The Minnesota Phone Company Financial Group, LLP will provide to AltiComm and the Department copies of all documents pertaining to the customers of The Minnesota Phone Company which it has received.

6. AltiComm will promptly and expeditiously send a letter to The Minnesota Phone Company customers (identified through the information it receives pursuant to paragraph 5 above) which shall include the following information:

- a. The Minnesota Phone Company is under new management.
- b. The customers should not pay any bills for telephone service they have received prior to this date.
- c. They will not experience any telephone service interruption if they do not pay these prior bills.
- d. They have a right to change their local and/or long distance service provider (although The Minnesota Phone Company invites them to continue their service with The Minnesota Phone Company).
- e. If they have any service or billing questions or problems, they may contact The Minnesota Phone Company at a stated telephone number.

Before the letter is sent, it will first be provided to, and promptly reviewed by, the Department. It is contemplated that the letter to customers will be accompanied by a document prepared by the Commission's Consumer Affairs Office, which will contain a communication from the Commission or its staff.

7. AltiComm will submit filings to the Commission to obtain local resale authority, in its own name. AltiComm has filed for long distance authority, and the Department will process this filing. AltiComm will also submit a request to the Commission to authorize the transfer of the assets and customers of ServiSense dba The Minnesota Phone Company, to AltiComm.

8. It is contemplated that The Minnesota Phone Company Financial Group, LLP, will pursue its own authorizations from the Minnesota Public Utilities Commission, in order to provide local resold service in Minnesota. It is further contemplated that after obtaining these authorizations, the customers of The Minnesota Phone Company will be transferred (after all necessary state regulatory approvals have been obtained to do so) to The Minnesota Phone Company Financial Group, LLP.

IV. COMMISSION ANALYSIS AND ACTION

The Commission has jurisdiction over the Department's complaint under Minn. Stat. §§ 237.081, subd. 1 and 237.74, subd. 4. The actions complained of are actions of a telephone company, i.e. the provision of telecommunications service to the public.

With no prejudice to either party regarding the Department's complaint and retaining authority to revisit the complaint as circumstances warrant, the Commission finds that the terms agreed to by the parties are reasonable and provide a reasonable manner to proceed in this matter. The Commission will direct the parties to abide by their agreement.

ORDER

1. The Commission asserts jurisdiction over the Department's complaint in this matter, approves the eight fore-stated terms (pp.4-5) as a reasonable way to proceed, and directs the parties to abide by these terms.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).