

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-012T

IN THE MATTER OF THE APPLICATION OF ALTICOMM, INC. FOR A CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES.

**ORDER GRANTING MOTION IN
PART AND DENYING IN PART**

Mailed Date: May 25, 2004
Adopted Date: May 12, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a motion filed by Commission Staff (Staff) to Declare Stipulation and Settlement Agreement (Stipulation) Null and Void and to Withdraw the Commission's Conditional Grant of AltiComm, Inc.'s (AltiComm) Certificate of Public Convenience and Necessity (CPCN). Staff alleges that AltiComm failed to abide by the terms of the Stipulation and failed to communicate with Staff as to its intentions in this matter. Staff also requests a two-year bar on any application by AltiComm for a telecommunications CPCN.

2. AltiComm responded to Staff's motion. While agreeing with Staff that it has failed to follow the terms of the Stipulation, AltiComm argues that, because it has not violated any Commission rules, regulations, or orders, no Commission action is necessary. In conjunction with its pleading responding to Staff's motion, AltiComm also filed a motion for enlargement of time to file its response.

3. Now, being duly advised in the matter, we grant Staff's motion in part and deny in part, consistent with the discussion below. We also grant AltiComm's motion for enlargement of time to file response and waive response time to that motion.

B. Background

4. On January 10, 2003, AltiComm filed an application for a CPCN to provide local exchange telecommunications services in Colorado pursuant to 4 *Code of Colorado Regulations* (CCR) 723-25-4. As part of the application for a CPCN to provide local exchange telecommunications services, Rule 4 CCR 723-25-4.1.8 requires that an applicant disclose information concerning any adverse decision entered by any court or regulatory body (within the previous five years of the date of the application), regarding the applicant's provision of local exchange telecommunications services that resulted in: criminal or civil penalties; injunctive relief; reparations; initiation of a show cause proceeding or disciplinary action; refusal to grant operating authority; or decertification or revocation of operating authority.

5. Upon an investigation of AltiComm's application, Staff obtained information that appeared to question the veracity and completeness of the information provided in AltiComm's application for a CPCN. Specifically, AltiComm had indicated on its application that no adverse decisions or corrective action had been taken against it. However, Staff determined that specific corrective action was taken against AltiComm in Minnesota and Iowa.¹

6. In Decision No. C03-0167, we found that the actions taken in Minnesota and Iowa indicated that there had been corrective action, an initiation of a show cause proceeding, and an initiation of disciplinary action directed against AltiComm, formerly known as Eastern

¹ Minnesota PUC action in Docket No. P-6164/C-02-1383 directing compliance with Filed Agreement. Iowa Utilities Board action in Docket No. FCU-02-17 regarding non-compliance issues.

Telephone, Inc. We further found that those actions should have been disclosed in Alticom's application for telecommunications authority as required in Rule 4 CCR 723-25-4.1.8(d), (f), and (g). As a result, we rejected Alticom's application.

7. Alticom filed an application for rehearing, reargument, or reconsideration (RRR) to Decision No. C03-0167. According to Alticom, it was through a contractual relationship between its predecessor company, Eastern Telephone, Inc., and On Systems Technology, LLC that the administrative proceedings in Iowa and Minnesota arose. Alticom argued that it could not and did not have local or long distance customers in Iowa or Minnesota.

8. We found that Staff was justified in its concern that substantive information had been withheld in Alticom's application. However, despite denying Alticom's application for RRR, we found Alticom was nonetheless entitled to an evidentiary hearing to fully explain its CPCN application and to more fully explore certain factual representations made by Alticom in its application for RRR. A hearing was held on April 30, 2003.

9. After we reviewed the facts presented at hearing, in Decision No. C03-1116, we conditionally granted Alticom's application for a CPCN. We found that it would serve no purpose to deny Alticom's application for a CPCN, only to allow it to file a subsequent application which would presumably include the relevant corrective action it failed to disclose in its original application.

10. However, in order to assuage our concerns about Alticom's fitness to operate as a telecommunications provider in Colorado, we made the grant of operating authority contingent on Alticom posting a bond with the Commission to protect any future customers. We ordered Alticom and Staff to work together to negotiate the terms of the bond, including the amount,

length of time the bond was to be held, and an enumeration of the situations that would cause the bond to come due. We ordered the parties to complete negotiations within 30 days of the effective date of the order.

11. In conformance with our Order, Staff and Alticom filed a Stipulation on December 17, 2003 which, among other things, set forth the amount of the bond and certain conditions and terms, such as the length of time the bond was to be held, an enumeration of the situations that would cause the bond to become due, and how the money was to be used should the bond become due. In Decision No. C04-0040, effective on January 13, 2004, we approved the Stipulation. We further held that Alticom was authorized to offer local exchange telecommunications services in Colorado contingent upon it posting the bond according to the terms of the Stipulation, and once it had an effective local tariff on file with the Commission.

12. On April 19, 2004, Staff filed the motion at issue here. According to Staff, as of the date of its motion, Alticom, in violation of the Stipulation and our Decision No. C04-0040, failed to post the required bond and failed to file a tariff with the Commission. Staff represents that Alticom has offered no explanation or reason for its failure to abide by the terms of the Stipulation and our orders. Staff points out that our grant of Alticom's CPCN was conditioned upon Alticom posting a bond and filing a tariff, as well as compliance with the balance of the terms set forth in the Stipulation.

13. Staff finds indicative of Alticom's inability to comply with Commission orders, rules, and regulations that Alticom failed to comply with the requirements articulated in the Stipulation, and our orders. Therefore, Staff requests that the Stipulation be declared null and

void, that we withdraw our conditional grant of authority to AltComm, and that we prohibit AltComm from applying for a CPCN with the Commission for a period of two years.

14. AltComm responds that, although Staff correctly identified the pleadings and orders relevant to this proceeding, it nonetheless distorted the content and ultimate result of those documents in order to bar AltComm from seeking a CPCN in Colorado for a period of two years. AltComm argues that the prohibition Staff seeks is unreasonable and inequitable and that Staff offers no legal or factual justification for the relief it seeks.

15. According to AltComm, although Staff's assertion that it failed to meet the terms of the Stipulation is correct, Staff incorrectly states that AltComm has violated Commission rules, regulations, or orders. Rather, AltComm asserts that, because it failed to meet the terms of the Stipulation and cannot now receive a CPCN, the Stipulation and the Commission's grant of a conditional CPCN expired by their own terms. Therefore, Staff's motion is unnecessary.

16. Since, according to AltComm, it has not violated any Commission rules or orders, and the Commission can adequately gauge whether or not AltComm is qualified to receive a CPCN in the future, we should deny Staff's request that AltComm be barred for a period of two years. AltComm argues that the remainder of Staff's motion is moot because the Stipulation is null and void by its own terms.

17. In conjunction with its pleading responding to Staff's motion, AltComm also filed a motion for enlargement of time to file its response pleading.

C. Analysis

18. It is evident that AltComm has failed to meet the terms of the Stipulation it entered into with Staff regarding the posting of a bond. As a result of that failure, we assume that

AltComm found no reason to file a tariff with the Commission regarding its telecommunications service offering in Colorado. We make this assumption because AltComm has provided Staff and the Commission with limited information regarding its current status.

19. In its response to Staff's motion, AltComm does not dispute Staff's allegation that it has breached the terms of the Stipulation. Rather, AltComm discloses that it is experiencing financial difficulties which preclude it from posting the required bond. It appears to us that this is the first indication from AltComm (despite Staff's representations that it has attempted to contact AltComm regarding its status with no response) that it cannot meet the terms of the Stipulation, which was required prior to its receipt of a CPCN. AltComm argues that nothing need be done by the Commission because the Stipulation and our grant of a conditional CPCN expired by their own terms when AltComm failed to post the required bond.

20. In Decision No. C04-0040, we found that the Stipulation Staff and AltComm had negotiated complied with the requirements we set out in Decision No. C03-1116. We found that the terms of the Stipulation alleviated our concerns regarding the protection of AltComm's customers should it default on the terms of the Stipulation. However, it still remained for AltComm to actually post the required bond before it could be granted a CPCN. As indicated above, AltComm failed to do so.

21. Despite AltComm's argument that no further action is necessary here, we point out that we specifically issued an order approving the Stipulation (C04-0040); additionally, by the very terms of the Stipulation, Commission approval of the Stipulation was required. Therefore, we make the determination that, because AltComm failed to comply with the terms of the Stipulation, it is now null and void. Consequently, we find that AltComm shall not

receive a CPCN. However, we decline to prohibit AltComm from applying for a CPCN with the Commission for a period of two years, as Staff requests.

22. While we agree with AltComm that no basis exists to bar it from applying for a CPCN in Colorado for two years, we nevertheless take this opportunity to impress upon and remind AltComm of its obligations before this Commission. Should AltComm determine at some future date to file another application for a CPCN here, we strongly advise it to rigorously comply with our rules and strictly adhere to the application process. Given the current budget constraints with which state agencies find themselves saddled, we are loath to expend precious Commission resources on an application that fails to conform to our rules and procedures and may therefore not be in the public interest.

23. Therefore, we grant Staff's motion in part and deny it in part consistent with the discussion above. We also grant AltComm's motion for enlargement of time to file response to Staff's motion, and waive response time.

II. ORDER

A. The Commission Orders That:

1. The Motion of Commission Staff to Declare Stipulation and Settlement Agreement Null and Void and to Withdraw the Commission's Conditional Grant of AltComm, Inc.'s Certificate of Public Convenience and Necessity is granted in part and denied in part consistent with the discussion above.

2. The Stipulation and Settlement Agreement entered into between Commission Staff and AltComm, Inc., is null and void.

3. Having failed to meet the contingency requirements to obtain a certificate of public convenience and necessity, AltiComm, Inc.'s application for a certificate of public convenience and necessity is denied.

4. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the mailed date of this Order.

5. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 12, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners