

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	CC Docket No. 94-129
Selection Changes Provisions of the	)	
Telecommunications Act of 1996	)	
	)	
Policies and Rules Concerning Unauthorized	)	CC Docket No. 00-257
Changes of Consumers Long Distance Carriers	)	

**VERIZON’S PETITION FOR WAIVER OF THE ADVANCE  
NOTIFICATION REQUIREMENTS OF 47 C.F.R. § 64.1120(E)**

To avoid disruption of telephone service to New York and Rhode Island customers of Alticom, Inc., a defunct competitive local exchange carrier that was doing business as Alticom, Eastern Telephone, and ServiSense, the Commission should grant Verizon a waiver of the 30-day advance notice requirement in 47 C.F.R. § 64.1120(e). Verizon is the default carrier in New York and Rhode Island and is therefore required to take back the former Alticom customers in these two states. A waiver of the 30-day advance notification requirement will allow a “seamless transition of service from the original carrier to the acquiring carrier”<sup>1</sup> and is therefore in the public interest.

Until very recently, Alticom, Inc., on behalf of ServiSense, provided resold telephone service in several states in New England and the Mid Atlantic regions.<sup>2</sup> In 2001, ServiSense

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<sup>1</sup> *In the Matter of 2000 Biennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket Nos. 00-257, 94-129, First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129, 16 FCC Rcd 11218, 11222, para. 10 (rel. May 15, 2001).

<sup>2</sup> The only states at issue in this petition are New York and Rhode Island.

filed for protection under Chapter 11 of the Bankruptcy Code, but, pursuant to a management agreement approved by the bankruptcy court in 2002, AltiComm assumed ServiSense's operations and obligations, including the payment of wholesale bills from Verizon.<sup>3</sup> When AltiComm stopped paying those bills, the bankruptcy court ordered AltiComm to cease operations and notify its customers immediately that they must select a new local telephone provider. On June 24, AltiComm notified its New York customers that they must select a new local service provider by July 26.<sup>4</sup> And on June 30, AltiComm notified its Rhode Island customers that they must select a new local service provider by August 2.<sup>5</sup> Some AltiComm customers in New York and Rhode Island did not act by these service cessation dates and will soon be transferred to Verizon as the default carrier in those states. In New York, approximately 500 consumers and 70 business customers would be transferred to Verizon, and in Rhode Island approximately 40 consumers and 10 business customers would be transferred.

The Commission's streamlined procedures for acquiring part or all of another telecommunications carrier's subscriber base would require Verizon to notify both the Commission and the affected subscribers of the carrier change. *See* 47 C.F.R. § 64.1120(e). In relevant part, the regulations require at least 30 days' notice to both the Commission and the affected subscribers. *See id.* § 64.1120(e)(1), (e)(3). The notice must contain, among other things, information about the type of telecommunications services to be provided, the date of the transfer, and rate information. *See id.* § 64.1120(e)(1), (e)(3)(i)-(vii).

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<sup>3</sup> *See* Attach. A.

<sup>4</sup> *See* Attach. B.

<sup>5</sup> *See* Attach. C.

To comply with these regulations, Verizon would have had to provide notice to defaulted AltiComm New York customers by June 26 and to defaulted AltiComm Rhode Island customers by July 2. This was not possible. Verizon will not know which former AltiComm customers in New York and Rhode Island will be transferred to Verizon until some time after the termination dates specified in the AltiComm letters. Indeed, even as of the date of this filing, Verizon does not have a final default list, and, as a result, the affected AltiComm subscribers cannot be transferred to Verizon. The New York and Rhode Island commissions expect Verizon to begin switching these customers shortly, but, in any event, Verizon cannot switch the former AltiComm customers until it receives an FCC waiver for the 30-day advance notice requirements.

Recently, on nearly identical facts, the Consumer and Governmental Affairs Bureau (the Bureau) granted Qwest's request for a waiver of the 30-day advance notification requirements.<sup>6</sup> The Bureau found that, because "compliance with the 30-day advance notice requirement could potentially result in the loss of local service for [the CLEC's] customers," a waiver served the public interest.<sup>7</sup> The Bureau also found it "unlikely that the affected subscribers will suffer harm from receiving less than 30 days notice of the transfer" and concluded that, in any event, "any such harms would be outweighed by the benefits of a seamless transfer of service."<sup>8</sup>

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<sup>6</sup> *In the Matter of 2000 Biennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Qwest Corporation and Qwest Long Distance Corporation Petition for Waiver*, CC Docket Nos. 00-257, 94-129, Order, 19 FCC Rcd 8148 (rel. May 4, 2004) (*Qwest Order*).

<sup>7</sup> *Id.* at 8150, para. 7.

<sup>8</sup> *Id.*

Similarly, for AltiComm's former New York and Rhode Island customers who have not selected a new service provider, Verizon's compliance with the Commission's 30-day advance notification requirement would result in the loss of local telephone service for more than a month. Verizon expects to learn shortly which former AltiComm customers have not selected a new carrier and will then promptly send the notification letters required by the Commission's rules. Without a waiver, however, the earliest date by which Verizon could likely start service would be mid- to late-September. Loss of local service for such a period of time is not in the public interest.

In addition, because AltiComm has already notified its New York and Rhode Island subscribers that they must select a new provider or they will be automatically transferred to Verizon as the default provider,<sup>9</sup> former AltiComm subscribers who receive less than 30 days' notice from Verizon will not suffer any appreciable harm. As the Bureau found in the *Qwest Order*,<sup>10</sup> the benefits of Verizon's providing fewer than 30 days' notice to these subscribers -- i.e., seamless provision of local telephone service -- greatly outweighs any burdens of the shorter notice -- i.e., loss of local telephone service for over 30 days.

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<sup>9</sup> See Attachs. B and C.

<sup>10</sup> *Qwest Order*, 19 FCC Rcd at 8150, para. 7.

## Conclusion

For the foregoing reasons, the Commission should grant Verizon a waiver of its carrier change authorization and verification rules so that former Alticom customers in New York and Rhode Island transferred to Verizon as the default carrier do not suffer disruption of local telephone service.

Respectfully submitted,

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Date: August 6, 2004

Attorney for Verizon

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(Eastern Division)

In re:	)	
	)	Chapter 11
SERVISENSE.COM, INC.,	)	Case No. 01-06539-WCH
	)	
Debtor.	)	

**AGREED ORDER EXTENDING MANAGEMENT  
AGREEMENT THROUGH AND INCLUDING JULY 31, 2004**

Upon consideration of 1) the Motion of Alticom, Inc. for Entry of a Bridge Order Extending Management Agreement to July 1, 2004 and Request for a Hearing (the "Motion"), filed by Alticom, Inc. f/k/a Eastern Telephone, Inc. ("Alticom") on March 31, 2004; 2) the Affidavit of Stephen Burakoff in support of the Motion; 3) the Affidavit of Alan K. Stern in support of the Motion; 4) the representations of counsel for Alticom, Craig R. Jalbert, the Liquidating Supervisor of Servisense.com, Inc. (the "Estate") and Verizon Communications, Inc., along with its operating subsidiaries ("Verizon") at the hearing held before this Court on May 12, 2004; 5) the representation of the parties that the Management Agreement, dated as of February 1, 2002 (the "Management Agreement") be extended through July 31, 2004 by agreement, subject to the terms and conditions of this Order; and 6) the record of the proceedings in this case,

**IT IS HEREBY FOUND THAT;**

1. On August 20, 2001 (the "Petition Date"), Servisense.com, Inc. (the "Debtor") filed for protection under Chapter 11 of the Bankruptcy Code. On April 10, 2002, this Court

entered an order confirming the *Joint Liquidating Plan of Reorganization* (the "Plan") proposed by the Debtor and the Official Committee of Unsecured Creditors, pursuant to which the Liquidating Supervisor was appointed as the fiduciary of the Debtor's estate and was given the powers, duties and obligations set forth in the Plan and in the *Liquidating Supervisor Agreement* attached to the Plan as Exhibit A.

2. Both prior to and subsequent to the Petition Date, Verizon provided telecommunication and related services to the Debtor (the "Verizon Services") pursuant to various agreements and/or tariffs (the "Verizon Agreements"). The Debtor then resold a portion of these telecommunication services to its end user customers.

3. On February 1, 2002, pursuant to this Court's Order Authorizing Debtor's Private Sale of Assets (as amended and modified, the "Sale Order"), the Debtor sold substantially all of its assets to Eastern Telephone, Inc., a Massachusetts corporation, which later changed its name to Alticomm, Inc. ("Alticomm").

4. Under the Sale Order, the Verizon Agreements were not assumed by the Debtor and assigned to Alticomm. Rather, Alticomm assumed the operations of the Debtor's business pursuant to a certain management agreement by and between the Debtor and Alticomm effective and dated as of February 1, 2002 (the "Management Agreement"), and continued operating the Debtor's business under the Debtor's licenses, accounts and agreements, including the Verizon Agreements, while Alticomm sought consent of the Federal Communications Commission (the "FCC") and applicable state regulatory agencies to operate the Debtor's business in its own name. Pursuant to the Management Agreement, Alticomm assumed responsibility for all obligations that Alticomm incurred in connection with its use of the Debtor's licenses, accounts and agreements subsequent to the effective date of the Management Agreement, including all

obligations to Verizon for Verizon Services, in connection with the operation of the Debtor's business. Pursuant to its terms, the Management Agreement was to terminate upon the earlier of either (i) the date that Alticom received the requisite regulatory consents and completed all actions required by the FCC and applicable state regulatory agencies, or (ii) nine months after the execution of the Management Agreement (i.e. November 1, 2002).

5. Alticom failed to obtain the required regulatory consents by the date the Management Agreement was originally set to expire. As of the date of this Order, Alticom still has not obtained such regulatory consents. Moreover, Alticom has gotten increasingly behind in its obligations under the Management Agreement to Verizon and other entities. Pursuant to a series of orders and stipulations, the parties have agreed to a series of extensions of the Management Agreement. The Motion seeks a further extension.

6. Alticom has acknowledged and agreed that it is obligated to Verizon in the amount of \$1,931,000.00 for arrearage payments owed for Verizon Services rendered from the period February 1, 2002 through August 31, 2003 (the "Arrearage").

7. Alticom has further acknowledged and agreed that as of May 1, 2004, it also owed Verizon late-payment fees in the amount of not less than \$120,000 from the time period September 1, 2003 through April 30, 2004, and that such late-payment fees will continue to accrue at the rate of \$18,000 per month until the Arrearage is completely satisfied (collectively, the "Late Payment Fees").

8. Alticom further acknowledges and agrees that it currently uses Verizon Services at a rate of approximately \$160,000 per month, that payment for such services is due on the first day of the month after such services have been provided (i.e., services provided in May must be

\$160,000 on May 28, 2004 (for April usage); (iii) \$160,000 on June 7, 2004 (for May usage), (iv) \$160,000 on July 1, 2004 (for June usage), and (v) \$160,000 on August 2, 2004 (for July usage) (collectively, the "Required Payments"); provided, however, that if Alticom's usage on any given month exceeds \$160,000, Alticom shall pay any such additional amount as a part of its next Required Payment.

10. Alticom further acknowledges and agrees that it shall pay all expenses and attorneys' fees incurred by Verizon from September 1, 2003 forward in connection with the previous extensions of the Management Agreement, this Order, any modifications of this Order, any efforts to collect any past, current or future obligations that may be due or may become due that in any way relate to the Arrearages, Late Payment Fees, Current Obligations, and any additional obligations that have arisen or may arise in connection with any Verizon Services, which expenses and attorneys' fees Verizon's estimates at \$50,000 as of May 1, 2004.

11. Alticom further acknowledges and agrees that any payments it may make to Verizon pursuant to this Order shall have no effect on any other obligations Alticom or any of its affiliates may have to Verizon or any of its affiliates that do not arise from the Management Agreement or the Verizon Services.

**THEREFORE, IT IS:**

**ORDERED**, that the Management Agreement is extended by agreement of the parties through and including July 31, 2004; and it is further

**ORDERED**, that Alticomm shall make the Required Payments to Verizon in accordance with the provisions of this Order as specified above on the following dates: May 21, 2004; May 28, 2004; June 7, 2004; July 1, 2004; and, August 2, 2004; and that payments shall be made by wire transfer before 2:00 p.m. Eastern Time on each of the specified dates; and it is further

**ORDERED**, that Alticomm shall forthwith cure arrears to Verizon with respect to Late Payment Fees, which totaled no less than \$120,000 as of May 1, 2004 and continue to accrue in the amount of \$18,000 per month, and that Alticomm shall promptly reimburse Verizon for all expenses and attorneys' fees Verizon has incurred or may incur from September 1, 2003 forward as specified in paragraph 10 above; and it is further

**ORDERED**, that in addition to the Required Payments, Late Payment Fees, and expenses and attorneys' fees, Alticomm remains liable to Verizon in the amount of \$1,931,000.00 for the Arrearage; and it is further

**ORDERED**, that Alticomm shall render payment in the approximate amount of \$165,000 to applicable states with respect to service deposits by rendering (a) payment totaling half of the current amounts due on or before June 10, 2004, and (b) payment totaling the other half due on or before July 1, 2004; and it is further

**ORDERED**, that Alticomm shall cure all outstanding tax arrears to the Estate by rendering (a) payment totaling \$50,000 on or before June 10, 2004, and (b) payment totaling \$50,000 on or before July 1, 2004; and it is further

**ORDERED**, that Alticomm shall render payment to the Estate totaling \$50,000 (representing accrued fees and expenses of the Estate relating to Alticomm's extensions of the

Management Agreement) by rendering (a) payment totaling \$25,000 on or before June 10, 2004, and (b) payment totaling \$25,000 on or before July 1, 2004; and it is further

**ORDERED**, that immediately upon the filing with this Court by Verizon of an affidavit of non-payment regarding any of the Required Payments, the Management Agreement, the Verizon Agreements, and any further agreements between Verizon and the Debtor pursuant to which Verizon provides the Verizon Services shall be deemed rejected and terminated, and Verizon shall be immediately authorized to terminate all such services; provided, however, that Alticom shall remain liable to Verizon for all obligations it may owe to Verizon as specified in this Order or as may otherwise arise; and it is further

**ORDERED**, that upon the filing with this Court of an affidavit of non-payment by the Liquidating Supervisor of the Estate, the Management Agreement shall be deemed to be terminated; and it is further

**ORDERED** that this Order is also without prejudice to any rights or remedies of the Debtor's estate or the Liquidating Supervisor to object to, or to assert against Verizon or any of its affiliates or subsidiaries, any claims, counterclaims, defenses, or objections in defense to any claim asserted by Verizon that any portion of the Required Payments or Arrearage that is not paid by Alticom constitutes an administrative expense of the Debtor's chapter 11 estate; and it is further

**ORDERED**, that in the event of the rejection or termination of the Management Agreement, the Verizon Agreements or any other agreements by which Verizon provides the Verizon Services, Alticom shall be responsible for providing any and all notices required under applicable state and federal regulations to the end users of the termination of telecommunication services to such end users.

  
5/25/04

June 24, 2004

TO OUR VALUED CUSTOMERS:

**YOU MUST CHOOSE A NEW LOCAL TELEPHONE SERVICE PROVIDER BY JULY 26, 2004**

Dear Customer:

We regret to inform you that as of July 26, 2004, AltiComm, Inc., doing business as AltiComm, Eastern Telephone, and ServiSense ("AltiComm") will no longer be providing your local telephone service in New York.

**YOU MUST TAKE ACTION! You must select a new local telephone service provider as quickly as possible but no later than JULY 26, 2004. If you do not select a new telephone provider, Verizon will become your new local service provider.**

Generally, you can find a list of most local telephone service providers in your local telephone directory. If you require assistance, please contact AltiComm, toll free, at 1-866-282-4200.

After selecting a new local service provider, you should contact your current intra-LATA (Regional) toll provider and your long distance provider to be sure that neither of your current calling plans is changed as a result of your change in local service. If you do not make sure that these plans remain the same after the transfer of your local service, you may be charged basic rates (non-calling plan rates) for intra-LATA and long distance calls.

AltiComm regrets any inconvenience this change may cause you.

June 30, 2004

TO OUR VALUED CUSTOMERS:

**YOU MUST CHOOSE A NEW LOCAL TELEPHONE SERVICE PROVIDER BY AUGUST 2, 2004**

Dear Customer:

We regret to inform you that AltiComm, Inc., doing business as AltiComm, Eastern Telephone, and ServiSense (“AltiComm”) has notified the Rhode Island Public Utilities Commission of its intent to cease its operation in the State of Rhode Island as of August 2, 2004.

**YOU MUST TAKE ACTION! You must select a new local telephone service provider as quickly as possible but no later than August 2, 2004 or you may lose your local telephone service.**

Generally, you can find a list of most local telephone service providers in your local telephone directory. If you require assistance, please contact AltiComm, toll free, at 1-866-282-4200.

After selecting a new local service provider, you should contact your current intra-LATA (Regional) toll provider and your long distance provider to be sure that neither of your current calling plans is changed as a result of your change in local service. If you do not make sure that these plans remain the same after the transfer of your local service, you may be charged basic rates (non-calling plan rates) for intra-LATA and long distance calls.

AltiComm regrets any inconvenience this change may cause you.