

D.T.E. 03-76-C

August 20, 2004

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12, 32, and 39 and G.L. c. 166, §§ 11 and 12, regarding the failure by several individually named common carriers of telecommunications services to file their annual returns for year 2001 by March 31, 2002, and their annual returns for year 2002 by March 31, 2003, and to pay statutory forfeitures.

In the Matter of:

Maxtel USA, Inc.

03-76-7

I. INTRODUCTION

The Department of Telecommunications and Energy (“Department”) requires that all common carriers that are engaged in the “transmission of intelligence within the commonwealth,” i.e., telecommunications services, must be registered by having an approved tariff on file with the Department as well as a current statement of business operations.

Regulatory Treatment of Telecommunications Common Carriers Within the Commonwealth of Massachusetts, D.P.U. 93-98, at 12 (1994); G.L. c. 159, § 12. All common carriers of telecommunications services within the Commonwealth also must file with the Department annual returns for the year ended December 31 by March 31 of the following year, in a format prescribed by the Department. Annual Returns, D.T.E. 03-76, Vote and Order to Open Investigation at 1 (2004) (“Vote and Order”); Annual Returns, D.T.E. 02-13, Vote and Order to Open Investigation at 1 (2002); G.L. c. 159, §§ 12, 32; G.L. c. 166, § 11.

Any telephone company that neglects to file the required annual return by the deadline forfeits to the Commonwealth five dollars per day for the first 15 days, ten dollars per day for the next 15 days, and 15 dollars per day for each day thereafter until the return is filed.

G.L. c. 166, § 12. Further, if the Department determines that a telephone company “unreasonably refuses or neglects to make such return,” the company shall forfeit up to \$500 in additional penalty. Id. If the Department finds that a common carrier has neglected to make returns as required by law, the Department is obligated to present the facts to the Attorney General for enforcement. G.L. c. 159, § 39.

II. PROCEDURAL HISTORY

On February 3, 2004, the Department opened separate investigations into the failure by 15 telephone companies to file annual returns and pay statutory forfeitures to the Commonwealth for both years 2001 and 2002, and into the failure by an additional 25 telephone companies to file their 2002 annual returns and pay statutory forfeitures. Vote and Order. The Department determined that 15 of these 40 companies were registered during both 2001 and 2002 to provide telecommunications services in the Commonwealth, because, at the time of the Vote and Order, the Department had on file approved tariffs and statements of business operations for these carriers, and the Department had these documents on file during 2001 and 2002. Id. at 1.

The Department opened investigations into the 40 companies, docketing each separately as indicated in Appendix A and Appendix B to this Order.¹ This Order pertains to Maxtel USA, Inc. (“Maxtel”),² docket number D.T.E. 03-76-7.

¹ In the Vote and Order, the Department opened investigations regarding Paramount International Telecommunications, Inc. (“Paramount”), docketed as D.T.E. 03-76-12, and TeleCents Communications, Inc. (“TeleCents”), docketed as D.T.E. 03-76-34. However, the Department subsequently discovered that TeleCents had in fact complied with the annual return filing requirement, and did not owe an overdue annual return or statutory forfeitures. Paramount complied with the Notice of Investigation and Hearing (April 21, 2004) by filing its annual returns for 2001 and 2002, each showing no intrastate revenues. The Department notified the companies that they were in compliance, and that it had cancelled the hearings involving TeleCents and Paramount and dismissed both cases. D.T.E. 03-76-34, Hearing Officer Memorandum Re: TeleCents Communications, Inc. (April 30, 2004); D.T.E. 03-76-12, Hearing Officer Memorandum Re: Paramount International Telecommunications, Inc. (May 14, 2004).

² As discussed below, this company has ceased its business in Massachusetts.

Pursuant to notice (“Notice”) duly issued,³ the Department conducted public and evidentiary hearings in this proceeding on April 14, 2004, and May 25, 2004. Maxtel did not enter an appearance or file comments. The evidentiary record in D.T.E. 03-76-7 contains five exhibits.⁴

III. ANALYSIS AND FINDINGS

Maxtel USA, Inc. was a registered common carrier of telecommunications services during 2001 and 2002 because the company had an approved tariff and statement of business operations on file with the Department for those years. D.P.U. 93-98, at 12. Maxtel informed the Department by letter, dated January 20, 2004, that it had no longer had customers in Massachusetts as of April 2002 (Exh. 4). The Department cancelled Maxtel’s tariff, effective February 2, 2004, upon receipt of the company’s letter notification that it was no longer doing business in the Commonwealth (Exhs. 1, 4).

Prior to commencing these investigations, the Department granted extensions, in both 2001 and 2002, for filing of annual returns past the March 31 annual deadline without

³ The Department sent a Notice of Investigation and Hearing to the last known address of Maxtel USA, Inc. on February 4, 2004 and April 21, 2004, and published the Notice in the Boston Globe on April 26, 2004.

⁴ Exhibit 1 is the company’s statement of business operations. Exhibit 2 is the cover page of the company’s tariff, as filed with the Department. Exhibit 3-01 is the July 1, 2002 letter that the Department’s Telecommunications Division sent to the company, extending the 2001 annual return filing deadline to July 22, 2002. Exhibit 3-02 is the August 22, 2003 letter that the Department’s Telecommunications Division sent to the company, extending the 2002 annual return filing deadline to September 19, 2003. Exhibit 4 is the letter filed by Maxtel USA, Inc., dated January 20, 2004, notifying the Department that it had no customers in Massachusetts as of April 2002.

incurring the statutory forfeiture, but only if the company filed by the new deadline.⁵ For the 2001 annual returns, the Department extended the filing deadline to July 22, 2002, and notified all telecommunications companies operating in the Commonwealth by certified mail. Id. at 2. For 2002 returns, the Department extended the filing deadline to September 19, 2003 and again notified the telecommunications companies by certified mail. Id. The Department did not grant any additional extensions. To date, Maxtel has not filed its 2001 and 2002 annual returns.

The Department served Notice of its investigation and hearing upon Maxtel, advising the company that the Department was investigating its neglect to file annual returns and that failure to respond or to produce the information requested in the Notice would lead to adverse findings of fact and orders for corrective action. See Vote and Order at 2-4. Maxtel did not respond to the Notice, and in fact had already requested cancellation of its tariff. The cancellation of this company's tariff in 2004 does not affect the requirement that it file the annual returns for previous years in which Maxtel was doing business in the Commonwealth. G.L. c. 159, § 32; G.L. c. 166, § 11; Vote and Order at 1-2. However, according to its January 2004 letter, Maxtel had no customers in April 2002 (Exh. 4), and its resident agent in Massachusetts resigned in late 2002.⁶ Therefore, although Maxtel should have informed the

⁵ The Department has the authority to set a deadline for filing annual returns other than March 31 "for good cause shown." G.L. c. 159, § 32.

⁶ The Department takes administrative notice, pursuant to 220 C.M.R. § 1.10(2), of a document filed with the Secretary of the Commonwealth of Massachusetts, indicating that the resident agent for Maxtel resigned effective November 29, 2002 (Certificate of (continued...))

Department earlier than January 2004 that it had ceased operations in Massachusetts nearly two years earlier, the Department finds that Maxtel was no longer doing business in the Commonwealth as of April 30, 2002.⁷

Registered common carriers are required to file annual returns in a timely manner, unless they withdraw their registration with the Department. G.L. c. 159, § 32; D.T.E. 02-13-G at 3; Entry Deregulation, D.P.U. 93-98, at 16 (1994). Accordingly, the Department finds that Maxtel USA, Inc. neglected to file its 2001 annual return by March 31, 2002, and that the daily statutory forfeiture to the Commonwealth of Massachusetts pursuant to G.L. c. 166, § 12 applies, calculated from March 31, 2002⁸ until April 30, 2002, when it was no longer doing business in the Commonwealth. Because Maxtel ceased operations in Massachusetts before the March 31, 2003 due date of the 2002 annual return, however, we find that Maxtel was not “doing business in the commonwealth” for purposes of filing a 2002 annual return under G.L. c. 166, §§ 11, 12, and thus no statutory forfeitures apply for 2002.⁹ See D.T.E. 02-13- G at 3-4; D.T.E. 02-13-F at 3-5.

⁶(...continued)

Resignation of Resident Agent, October 11, 2002).

⁷ Maxtel’s letter does not indicate the exact date in April 2002 it ceased operations in Massachusetts, so we determine that the company was no longer doing business as of the end of the month of April.

⁸ The extension of the filing deadline applied only to companies that filed by the new deadline. Because Maxtel did not file its annual returns by the extended deadline the Department offered, the forfeitures are calculated from the original statutory annual due date of March 31. See D.T.E. 02-13-A; D.T.E. 02-13-D; D.T.E. 02-13-F.

⁹ In D.T.E. 02-13-G, the Department found that Maxtel USA, Inc. was not doing
(continued...)

The Department must also consider whether the company's refusal or neglect to file the 2001 annual return was unreasonable. G.L. c. 166, § 12. Every telephone company that files a tariff and a statement of business operations with the Department makes a representation that it has the managerial, technical, operational, and financial ability to comply with statutory requirements and the Department's tariff review process, and the Department deems a registered company capable unless it specifically finds otherwise. See D.P.U. 93-98, at 12. Maxtel has provided no excuse for the failure to file its overdue 2001 return more than two years after the 2001 deadline.

Moreover, in addition to failing to respond to the Notice of these investigations, or to appear on either of the two hearing dates, Maxtel ignored or failed to respond to notices from the Department's Telecommunications Division reminding the company that it failed to file its annual return, and extending the deadline (Exhs. 3-01, 3-02). Although the Department is not required to provide reminders to companies that have represented to the Department that they have the ability to comply with the Commonwealth's statutory requirements, Maxtel's failure to respond compounds its neglect of their reporting obligations. Accordingly, the Department finds that the refusal or neglect on the part of Maxtel to file annual returns is unreasonable.

Therefore, both the daily forfeiture, accrued from March 31, 2002, as well as the additional

⁹(...continued)

business in the Commonwealth for purposes of filing a year 2000 annual return, because it earned no intrastate revenues in 2000. D.T.E. 02-13-G at 3-4. Common carriers that have no intrastate revenues may file an annual return or an affidavit attesting that the carrier did not earn intrastate revenues during the reporting year. Id. at 3. If Maxtel continued to have no revenues in 2001-2002, it failed to make the required attestation for those reporting years.

\$500 forfeiture, as provided in G.L. c. 166, § 12, are applicable to Maxtel for failure to file a 2001 annual return. The statutory forfeiture¹⁰ for the 2001 annual return, accrued between March 31, 2002 and April 30, 2002, a total of 29 days, is \$215, plus the additional forfeiture of \$500. The total forfeiture Maxtel USA, Inc. owes is therefore \$715.

IV. ORDER

After notice, hearing, opportunity for comment, and due consideration, it is

ORDERED that Maxtel USA, Inc. shall immediately file its annual return for the year 2001 and pay to the Commonwealth of Massachusetts the applicable statutory forfeitures consistent with this Order; and it is

¹⁰ Pursuant to G.L. c. 166, § 12, the statutory forfeitures are calculated at the rate of five dollars per day for the first 15 days overdue, ten dollars per day for the next 15 days, and 15 dollars per day for each day thereafter until the company was no longer doing business in Massachusetts.

FURTHER ORDERED that the findings of fact and directives herein shall be presented to the Attorney General of the Commonwealth of Massachusetts for action pursuant to G.L. c. 159, § 39.

By Order of the Department,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

APPENDIX A

Telephone companies that failed to file annual returns for years 2001 and 2002

<u>Carrier</u>	<u>Docket Number</u>
ESS.Com, LLC	03-76-1
Euronet Communications Corp.	03-76-2
Gerson Group	03-76-3
Long Distance Billing Services, Inc.	03-76-4
Massachusetts Local Telephone Company	03-76-5
Maxcess, Inc.	03-76-6
Maxtel USA, Inc.	03-76-7
Norstar Communications, Inc.	03-76-8
Ntera, Inc.	03-76-9
Optical Telephone Corporation	03-76-10
Paradigm Communications Corporation	03-76-11
Paramount International Telecommunications, Inc.	03-76-12
Pride America, Inc.	03-76-13
SecurFone America, Inc.	03-76-14
StormTel, Inc.	03-76-15

APPENDIX B

Telephone companies that failed to file an annual return for year 2002

<u>Carrier</u>	<u>Docket Number</u>
Americom Technologies	03-76-16
CCMA	03-76-17
Columbia Telecommunications, Inc. d/b/a aXessa	03-76-18
ConnectAmerica, Inc.	03-76-19
Equal Access Communications, LLC	03-76-20
Global Crest Communications, LLC	03-76-21
Globalcom, Inc.	03-76-22
Integrated Communications Consultants	03-76-23
Intelecall Communications, Inc.	03-76-24
LD Exchange.Com, Inc.	03-76-25
Maxxis Communications, Inc.	03-76-26
Natel, LLC	03-76-27
North American Telephone Network, Inc.	03-76-28
PF.Net Network Services Corporation	03-76-29
Power-Finder West Communications, LLC	03-76-30
Radiant Telecom, Inc.	03-76-31
TalkingNets Holdings, LLC	03-76-32
Talk Unlimited Now, Inc.	03-76-33
TeleCents Communications, Inc.	03-76-34
Telis Communications Group, Inc.	03-76-35
Touch America, Inc.	03-76-36
TransNet Connect, Inc.	03-76-37
UKI Communications, Inc.	03-76-38
United States Telecommunications, Inc.	03-76-39
WDT World Discount Telecommunications Company	03-76-40