



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 22-AR

December 1, 2023

Investigation by the Department of Telecommunications and Cable 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 individually-named common carriers of telecommunications services to file an annual return for calendar year 2019.

<u>Docket #</u>	<u>Carrier</u>	<u>Year of Delinquency</u>	<u>Massachusetts Secretary of the Commonwealth Status¹</u>
DTC-22-AR-1	American Telecommunication Systems, Inc.	2019	Involuntary Revocation 12/31/2021
DTC-22-AR-2	Brazilian Help, Inc.	2019	Registered/Active
DTC-22-AR-4	CPMC, Inc.	2019	Involuntary Revocation 12/31/2021
DTC-22-AR-12	Merrimack Education Center, Inc.	2019	Registered/active
DTC-22-AR-14	OPEX Communications, Inc.	2019	Registered/active
DTC-22-AR-17	Silv Communication Inc.	2019	Withdrawn 08/27/2019
DTC-22-AR-18	Televend, Inc.	2019	Voluntary Dissolution 08/23/2021
DTC-22-AR-19	Total Holdings, Inc.	2019	Involuntary Revocation 12/31/2021

I. INTRODUCTION

Each carrier that is the subject of this Order was a registered carrier with the Department during the year in question and was therefore required to file an annual return with the Department. *Delinquent annual returns for calendar year 2019 D.T.C. 22-AR, Order Opening*

¹ Massachusetts Secretary of the Commonwealth (“SOC”) records, Federal Communications Commission (“FCC”) records, and Department of Telecommunications and Cable (“Department”) tariff and Statement of Business Operations records are contained in Appendix 1; and calculation of forfeitures are contained in Appendix 2. Carrier records in these appendices are in alphabetical order.

Investigation (Jan. 5, 2023) (“*Order Opening Investigation*”) at 2. According to the Department’s records, each of the above-captioned telecommunications common carriers failed to file timely an annual return for calendar year 2019.

In this Order, the Department determines that Brazilian Help, Inc. (“Brazilian Help”); Merrimack Education Center, Inc. (“Merrimack Education”); OPEX Communications, Inc. (“OPEX”); Silv Communication, Inc. (“Silv”); and Televend, Inc. (“Televend”) have outstanding delinquent annual returns due to the Department and were doing business in the Commonwealth in 2019, the year for which the annual return was due. *See* G.L. c. 166, § 11. Accordingly, the Department cancels these five carriers’ registrations and intrastate tariffs on file with the Department to the extent they were not already canceled, assesses forfeitures against each of these five carriers, and will refer its findings to the Attorney General for enforcement. *See* G.L. c. 159, § 39; G.L. c. 166, § 12. These five carriers will no longer have legal authority to provide telecommunications services in the Commonwealth.

In addition, the Department determines that American Telecommunication Systems, Inc. (“American Telecommunication”); CPMC, Inc. (“CPMC”); and Total Holdings, Inc. (“Total Holdings”) have outstanding delinquent annual returns due to the Department but were not doing business in the Commonwealth in 2019, the year for which the annual return was due. *See* G.L. c. 166, § 11. Accordingly, the Department cancels these three carriers’ registrations and intrastate tariffs on file with the Department to the extent they have not already been canceled in previous orders.

II. PROCEDURAL HISTORY

On January 5, 2023, the Department opened investigations into the failure of certain named telecommunications carriers to file an annual return for calendar year 2019. *Order*

Opening Investigation. The Department simultaneously issued a Notice of Investigation, providing notice of the opportunity for hearing. *Delinquent annual returns for calendar year 2019*, D.T.C. 22-AR, *Notice of Investigation & Opportunity for Hearing* (January 5, 2023) (“*Notice*”). The Department published notice of the opportunity for hearing in the *Boston Globe* on January 23, 2023 and the *Republican* on January 23, 2023 as well. The Department received no comments and no requests for hearing. In the *Order Opening Investigation and Notice*, the Department directed each of the named carriers to respond in writing:

1. Did the company file the annual return for the relevant calendar year? If so, provide a copy of the annual return and documentation of the filing. If not, explain why the company did not file the annual returns, and state whether the failure to file is reasonable. If the failure to file is stated as reasonable, explain why.
2. Did the company provide telecommunications services in Massachusetts during the relevant calendar year?

Order Opening Investigation at 5; *Notice* at 2. The Department dismissed the investigations of 11 carriers that responded to the *Notice* and cured their delinquencies. Memo. of Dismissal, D.T.C. 22-AR-8 (Feb. 1, 2023); Memo. of Dismissal, D.T.C. 22-AR-13 (Feb. 1, 2023); Memo. of Dismissal, D.T.C. 22-AR-11 (Feb. 1, 2023); Memo. of Dismissal, D.T.C. 22-AR-16 (Feb. 3, 2023); Memo. of Dismissal, D.T.C. 22-AR-9 (Feb. 23, 2022); Memo. of Dismissal, D.T.C. 22-AR-15 (Feb. 23, 2023); Memo. of Dismissal, D.T.C. 22-AR-3 (Mar. 16, 2023); Memo. of Dismissal, D.T.C. 22-AR-10 (Mar. 16, 2023); Memo. of Dismissal, D.T.C. 22-AR-7 (Mar. 22, 2023); Memo. of Dismissal, D.T.C. 22-AR-5 (Mar. 23, 2023); and Memo. of Dismissal, D.T.C. 22-AR-6 (July 10, 2023). The remaining carriers subject to this investigation that have not filed an annual return for calendar year 2019 are as follows:

<u>Docket #</u>	<u>Carrier</u>	<u>Year of Delinquency</u>	<u>Massachusetts Secretary of the Commonwealth Status</u>
DTC-22-AR-1	American Telecommunication Systems, Inc.	2019	Involuntary Revocation 12/31/2021
DTC-22-AR-2	Brazilian Help, Inc.	2019	Registered/Active
DTC-22-AR-4	CPMC, Inc.	2019	Involuntary Revocation 12/31/2021
DTC-22-AR-12	Merrimack Education Center, Inc.	2019	Registered/active
DTC-22-AR-14	OPEX Communications, Inc.	2019	Registered/active
DTC-22-AR-17	Silv Communication Inc.	2019	Withdrawn 08/27/2019
DTC-22-AR-18	Televend, Inc.	2019	Voluntary Dissolution 08/23/2021
DTC-22-AR-19	Total Holdings, Inc.	2019	Involuntary Revocation 12/31/2021

III. ANALYSIS AND FINDINGS

Each of the eight carriers subject to this Order failed to file an annual return for calendar year 2019. *See Order Opening Investigation* at 3. The Department determines that Brazilian Help, Merrimack Education, OPEX, Silv and Televend have outstanding delinquent returns due to the Department and were doing business in the year for which the delinquent returns were due. The Department therefore assesses forfeitures against each of these five carriers. *See G.L. c. 166, § 12.* The Department will refer its findings against these carriers to the Attorney General for enforcement. *See G.L. c. 159, § 39.* The Department also cancels the registration of each of these five carriers, as well as all applicable intrastate tariffs they have on file with the Department, to the extent the Department has not already taken these actions. Further, the Department determines that American Telecommunication, CPMC, and Total Holdings were not doing business in the Commonwealth in the year for which the delinquent annual returns were due.

Accordingly, the Department does not assess forfeitures against these three carriers but does cancel their registrations and any intrastate tariffs they have on file, to the extent the Department has not already taken these actions. As of the date of this Order, the eight carriers subject to this Order no longer have legal authority to provide telecommunications service in Massachusetts.

A carrier must register with the Department in order to provide telecommunications service in Massachusetts. *Regulatory treatment of telecomms. common carriers within the Commw. of Mass.*, D.P.U. 93-98, *Order* at 12 (May 11, 1994) (“*Common Carrier Regulatory Treatment Order*”). Carriers providing telecommunications service in the Commonwealth are required to file annual returns with the Department for each calendar year by March 31 of the following year. G.L. c. 159, § 32; G.L. c. 166, § 11. Specifically, each telecommunications common carrier “doing business in the [C]ommonwealth” has a duty to file an annual return for the preceding calendar year by March 31, or at a later date fixed by the Department for “good cause shown.” G.L. c. 166, § 11; *see also Delinquent annual returns for calendar years 2016 and/or 2017*, D.T.C. 19-AR, *Final Order* at 9 (Nov. 4, 2020) (“*19-AR Final Order*”). Any carrier neglecting to file an annual return required by G.L. c. 166, § 11, shall forfeit to the Commonwealth \$5.00 per day for the first 15 days of delinquency, \$10.00 per day for the subsequent 15 days, and a sum not exceeding \$15.00 per day for each day of delinquency thereafter until the annual return is filed. G.L. c. 166, § 12. If the Department determines that a carrier “unreasonably refuses or neglects” to file an annual return, the carrier shall also forfeit up to \$500 for each offense as an additional penalty.² *Id.* The Department refers failures to comply with G.L. c. 166, § 11, to the Attorney General for enforcement. G.L. c. 159, § 39.

² The filing fee for an annual return is \$5.00. Mass. Dep’t of Telecomms. & Cable, *General Information & Filing Instructions Annual Return and Revenue Statement IPP Revenue Statement*, <https://www.mass.gov/doc/instructions-for-filing-an-annual-return/download>.

The Department thus must determine whether a carrier was doing business in the Commonwealth during the calendar year for which it failed to file an annual return with the Department. G.L. c. 166, § 11. If so, the carrier is subject to the above-mentioned forfeitures under G.L. c. 166, § 12. Although chapter 166 is silent as to what constitutes “doing business,” the Department relies on a definition derived from the Massachusetts Department of Revenue’s regulations. *See 19-AR Final Order* at 10; 830 C.M.R. § 63.39.1(3)(b) (defining “doing business” in the Commonwealth for taxation purposes). For purposes of G.L. c. 166, §§ 11 and 12, the Department defines “doing business” to include: the buying, selling, or procuring of services or property; the execution of contracts; the exercise or enforcement of contractual rights; the maintenance of a place of business; the employment of labor; and each and every other act, power, right, privilege, or immunity exercised or enjoyed in the Commonwealth as an incident to or by virtue of the powers and privileges acquired through corporate form. *19-AR Final Order* at 10. This list is not exhaustive. *See id.* A carrier’s registration status and filing history with the Secretary of the Commonwealth (“SOC”) and its own admissions to and determinations by the FCC³ may also inform the Department as to whether the carrier is doing business in the Commonwealth. *Id.* at 11. Any one of the above criteria is generally sufficient for the Department to find that a carrier is doing business in the Commonwealth. *Id.* However, a registered carrier’s lack of reportable intrastate revenues and lack of provision of

³ The FCC requires each telecommunications carrier to file an FCC Form 499-A, which includes a carrier’s revenue, annually by April 1, with limited exception. *See* FCC, 2017 Telecommunications Reporting Worksheet Instructions at 2-3 (“FCC Form 499-A Instructions”); 47 C.F.R. § 54.711. The FCC reports carrier registration information on its FCC Form 499 Filer database at <http://apps.fcc.gov/cgb/form499/499a.cfm> (last visited Oct. 2, 2023). The FCC Form 499 database only displays a filer’s most recent filing date, so it has only limited utility in ascertaining whether the filer was registered during a given year. However, the Department considers FCC activity that is close in time to the year in question as persuasive as to whether a company was doing business during that year.

telecommunications service in Massachusetts are indications that the carrier may not have been doing business in the Commonwealth. *See id.*

As to what constitutes “good cause” to extend a carrier’s filing deadline under G.L. c. 159, § 32, and G.L. c. 166, § 11, the Department relies on its longstanding standard:

Good cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party.

Id.; *N.E. Tel. & Tel. Co.*, D.P.U. 94-50, *Order* at 51 (May 12, 1995) (citing *Boston Edison Co.*, D.P.U. 90-335-A, *Order on Motion for Clarification and/or Reconsideration & on Request to Defer Filing of DSM Budgets* at 4 (July 14, 1992)). The Department has found good cause to extend an annual return filing deadline where, although delinquent, a carrier reports a negligible amount of revenue, or the statutory forfeitures, if applied, would far exceed the revenue reported on the carrier’s delinquent annual return. *19-AR Final Order* at 12. However, the Department will not extend a filing deadline absent good cause shown. *See Fall River Gas Co.*, D.P.U. 89-199-A, *Order on Att’y Gen.’s Motion for Reconsideration & Motion to Stay Appeal Period* at 7 (Dec. 27, 1989). In the absence of an extension of the filing deadline for a carrier doing business in Massachusetts during the relevant calendar year, the carrier is subject to the above-referenced statutory forfeitures if it does not timely file its annual return. *See* G.L. c. 166, §§ 11, 12.

Failure to file an annual return may also be grounds for cancellation of the carrier’s registration and intrastate tariff(s), which would bar the carrier from providing telecommunications services in the Commonwealth.⁴ *See Order Opening Investigation* at 3.

⁴ The Department’s SBO and registration forms require a registrant to sign an affidavit affirming that the registrant

Additionally, the Department may cancel the registration and “direct removal of public access line service from the payphones of any company” that fails to file its annual return. *Delinquent annual returns for calendar year 2000*, D.T.E. 02-13, *Order B* at 4 n.3 (Sept. 20, 2002).

The Department applies these rules to each of the eight carriers in turn.

A. Brazilian Help (DTC 22-AR-2); Merrimack Education (22-AR-12); OPEX (22-AR-14); Silv (22-AR- 17); Televend (22-AR-18)

Brazilian Help remains active with the SOC. It filed an annual report in 2019 and has filed annual SOC reports through 2022. The company is not listed with the FCC. The Department still determines based on the company being active with the SOC and having filed an annual report with the SOC in 2019 that Brazilian Help was doing business in the Commonwealth during 2019 for the purposes of G.L. c. 166 §§ 11 and 12.

Merrimack Education remains active with the SOC. It filed an annual report with the SOC in 2019 and last filed an annual report for 2021. Merrimack Education remains active with the FCC and is doing business as Addition Networks. Based on Merrimack Education being active with the SOC, having filed an annual report with SOC in 2019 and it being active with the FCC, the Department determines that the company was doing business in the Commonwealth during 2019 for the purposes of G.L. c. 166 §§ 11 and 12.

OPEX remains active with the SOC. OPEX filed an annual report with the SOC in 2019, the last year for which OPEX filed an annual report with the SOC. OPEX remains active with the

understands that its failure to comply with “all applicable Massachusetts laws and rules, Department Orders, regulations, letter rulings, directives, and other requirements, whether formal or informal . . . will be grounds for the Department to cancel the [r]egistrant’s registration/SBO and tariff(s), thus preventing the [r]egistrant from operating or providing telecommunications services within Massachusetts.” Dep’t of Telecomms. & Cable, *Application for Registration for Telecommunications Service Providers Other than Payphone Service Providers – Statement of Business Operations (SBO)* 8, <https://www.mass.gov/doc/statement-of-business-operations-sbo/download> see also Dep’t of Telecomms. & Cable, *Pay Telephone Registration Form* 8, https://www.mass.gov/files/2017-07/payphoneregistrationform_0.pdf.

FCC. Based on OPEX remaining active with the SOC, having filed an annual report with the SOC in 2019 and being active with the FCC, the Department determines that the company was doing business in the Commonwealth during 2019 for the purposes of G.L. c. 166 §§ 11 and 12.

Silv voluntarily withdrew its registration with the SOC on August 27, 2019. However, Silv still filed an annual report with the SOC for 2019. Silv is no longer active with the FCC as of March 31, 2023 because the account was inactive for an extended period of time and the administrator could not contact the filer. Even though Silv is no longer active with the FCC, it did not withdraw its SOC registration until August 2019 and filed an annual report for 2019. Silv also remained active with the FCC in 2019. Thus, the Department determines that the company was doing business in the Commonwealth during 2019 for the purposes of G.L. c. 166 §§ 11 and 12.

Televend filed a notice of voluntary dissolution with the SOC on December 31, 2021. Televend filed an annual report with the SOC for 2019 and filed annual reports with the SOC until 2021. Televend is no longer active with the FCC as of March 31, 2020 because the account was inactive for an extended period of time and the administrator could not contact the filer. Based on Televend not voluntarily dissolving until 2021, filing an annual report with the SOC in 2019 and being active with the FCC in 2019, the Department determines that the Company was doing business in the Commonwealth during 2019 for the purposes of G.L. c. 166 §§ 11 and 12.

In sum, the Department finds that Brazilian Help; Merrimack Education; OPEX; Silv and Televend were each doing business in the Commonwealth in 2019. The companies were therefore required to file annual returns for calendar year 2019 by March 31, 2020, but failed to do so.

No good cause exists to extend the filing deadlines associated with these delinquent annual returns. None of these carriers provided a reason for its failure to file the required annual return or demonstrated the existence of good cause to extend the filing deadline. The Department notes that each of these carriers failed to respond to the *Notice* and failed to otherwise communicate with the Department. Consequently, the Department determines that no good cause exists to extend the carriers' filing deadlines. Each of the unfiled annual returns therefore remains delinquent. Brazilian Help; Merrimack Education; OPEX; Silv and Televend are each subject to per diem statutory forfeitures beginning on April 1, 2020, for their delinquent 2019 annual returns. Given the companies' lack of response and cooperation, the Department imposes the maximum \$15.00-per-day forfeiture allowable after the initial 30 days of delinquency. *See* G.L. c. 166, § 12; *19-AR Final Order* at Appendix 2 (imposing the maximum \$15.00-per-day forfeiture). The forfeitures continue to accrue for each of these companies.

The Department must also determine whether each carrier's failure to file the required annual return was unreasonable. *See* G.L. c. 166, § 12. As each carrier failed to provide a reason for its failure to file and failed to respond to the *Notice*, the Department finds that each carrier's failure to file was unreasonable. Given this lack of response and cooperation, the Department imposes the maximum additional \$500 forfeiture for each delinquent return. *See id.*; *21-AR Final Order* at Appendix 2 (imposing the maximum \$500-per-offense forfeiture). The Department will refer these findings to the Attorney General for enforcement pursuant to G.L. c. 159, § 39.

In addition, the Department finds the failures of Brazilian Help; Merrimack Education; OPEX; Silv and Televend to comply with the Department's requirements as reason to cancel their SBOs and intrastate tariffs on file with the Department. *See Order Opening Investigation* at 4-5; *19-AR Final Order* at 18; *Common Carrier Regulatory Treatment Order* at 12. The

companies failed to file an annual return for 2019 or otherwise communicate with the Department regarding their delinquency. Thus, the Department cancels the registrations and intrastate tariffs on file with the Department of Brazilian Help; Merrimack Education; OPEX; Silv and Televend as of the date of this Order.

B. American Telecommunication (22-AR-1); CPMC (22-AR-4); Total Holdings (22-AR-19)

The SOC involuntarily revoked American Telecommunication on December 31, 2021. American Telecommunication last filed a report with the SOC for 2017. American Telecommunications is no longer active with the SOC as of March 31, 2023 because the account was inactive for an extended period of time and the administrator could not contact the filer. Based on American Telecommunication filing its last annual report for 2017, the Department determines that the Company was no longer doing business in the Commonwealth during 2019 for the purposes of G.L. c. 166 §§ 11 and 12.

The SOC involuntarily revoked CPMC on December 31, 2021. CPMC last filed an annual report with the SOC for 2017. CPMC was no longer active with FCC on March 31, 2019. Based on CPMC filing its last annual report with the SOC for 2017 and CPMC being no longer active with the FCC as of the end of March 2019, the Department determines that the Company was no longer doing business in the Commonwealth during 2019 for the purposes of G.L. c. 166 §§ 11 and 12.

The SOC involuntarily revoked Total Holdings on December 31, 2021. Total Holdings filed its last annual report with the SOC for 2018. Total Holdings was no longer active with the FCC as of December 31, 2019 because the account was inactive for an extended period of time and the administrator could not contact the filer. Based on Total Holdings last annual report being filed with the SOC for 2018 and the FCC holding that Total Holdings was no longer active

at the end of 2019 after a long period of inactivity, the Department determines that the Company was no longer doing business in the Commonwealth during 2019 for the purposes of G.L. c. 166 §§ 11 and 12.

To summarize, the Department finds that American Telecommunication; CPMC; and Total Holdings were not doing business in the Commonwealth during 2019. Therefore, the Department does not assess statutory forfeitures against these companies for their failure to submit annual returns for calendar year 2019. The Department does, however, cancel the registrations and intrastate tariffs on file with the Department of these companies as of the date of this Order, to the extent such registrations and tariffs were not already canceled.

IV. ORDER

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

ORDERED that Brazilian Help; Merrimack Education; OPEX, Silv and Televend shall each immediately file an annual return for calendar year 2019, and pay to the Commonwealth of Massachusetts the applicable statutory forfeitures consistent with this Order; and it is

FURTHER ORDERED to the extent not already done so, that the SBOs and intrastate tariffs on file with the Department of American Telecommunication; Brazilian Help; CPMC; Merrimack Education, OPEX, Silv, Televend and Total Holdings be canceled effective immediately; and it is

FURTHER ORDERED that to the extent not already done so, public access line services be removed from the payphones of CPMC and Televend; and it is

FURTHER ORDERED that the findings of fact and directives herein involving the delinquent annual returns of Brazilian Help, D.T.C. 22-AR-2; Merrimack Education, 22-AR-12; OPEX, D.T.C. 22-AR-14; Silv, D.T.C. 22-AR-17, and Televend, D.T.C. 22-AR-18 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,



Karen Charles,
Commissioner

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5 and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court of the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may also be brought pursuant to 47 C.F.R. § 76.944.