

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 13-AR

December 3, 2013

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 annual returns for calendar years 2010 and/or 2011.

ORDER OPENING INVESTIGATION

<u>Docket #</u>	<u>Carrier</u>	<u>Year(s) of Delinquency</u>
DTC 13-AR-1	Genesis Fiber Communications, LLC	2011
DTC 13-AR-2	Go Solo Technologies, Inc.	2011
DTC 13-AR-3	Legacy Long Distance International, Inc.	2011
DTC 13-AR-4	MMG Holdings, Inc.	2011
DTC 13-AR-5	Telco Partners, Inc.	2011
DTC 13-AR-6	EasyLink Services, Corp. fka Mail.com Business Messaging Services, Inc. aka EasyLink Services USA, Inc.	2010, 2011
DTC 13-AR-7	G4 Telecom MA, LLC	2010, 2011
DTC 13-AR-8	HRC Housing For Elderly, Inc. dba Jack Satter House	2010, 2011
DTC 13-AR-9	International Network Solutions, LLC	2010, 2011
DTC 13-AR-10	New England Payphone, Inc.	2010, 2011
DTC 13-AR-11	NSC Service Corporation ("NSC Svc. Corp.") aka NSC Communications Public Services Corporation ("NSC Comm. PSC") dba NSC Communications	2010, 2011
DTC 13-AR-12	Pelzer Communications Corp.	2010, 2011
DTC 13-AR-13	Rockland Health Group, LLC dba South Shore Rehabilitation & Skilled Care Center	2010, 2011
DTC 13-AR-14	STI Telecom, Inc.	2010, 2011
DTC 13-AR-15	Telmex USA, LLC	2010, 2011
DTC 13-AR-16	Touch 1 Communications, Inc. dba Alabama Touch 1 Communications, Inc.	2010, 2011
DTC 13-AR-17	Tricom USA, Inc.	2010, 2011

I. INTRODUCTION

The Department of Telecommunications and Cable (“Department”), pursuant to statutory requirements, requires each telecommunications common carrier (“common carrier”) registered with the Department, or otherwise doing business in the Commonwealth, to file an annual return with the Department. The Department’s records indicate that the 17 common carriers named in this Order failed to file annual returns for calendar years 2010 and/or 2011. The Department opens this investigation on its own motion with regard to these common carriers’ failures to file annual returns. The Department will docket these proceedings under the generic docket number, D.T.C. 13-AR, with a sequential number for each individual case, *e.g.*, D.T.C. 13-AR-1, D.T.C. 13-AR-2.

II. ORDER OPENING INVESTIGATION

Pursuant to G. L. c. 159, § 12(d), the Department requires all common carriers engaged in the “transmission of intelligence within the [C]ommonwealth” to register and have an approved tariff and current statement of business operations (“SBO”) on file with the Department.

Investigation by the Dep’t of Pub. Utils. on its own motion into the regulatory treatment of telecomms. common carriers within the Commw. of Mass., D.P.U. 93-98, Order (May 11, 1994) (“Common Carrier Regulatory Treatment Order”), at 12. Each common carrier must also file an annual return with the Department for each calendar year by the following 31st of March, or at a later date that the Department fixes “for good cause shown[.]” G. L. c. 159, § 32; G. L. c. 166, § 11.

The Department may commence enforcement proceedings against common carriers that fail to file their annual returns. *See generally, Annual returns proceeding for calendar years 2005 through 2009, D.T.C. 11-AR, Order Opening Investigation (Dec. 2, 2011) (“D.T.C. 11-*

AR”); *Annual returns proceeding for calendar years 2003 & 2004*, D.T.E. 05-95, Vote & Order to Open Investigation (Mar. 22, 2006) (“D.T.E. 05-95”); *Annual returns proceeding for calendar years 2001 & 2002*, D.T.E. 03-76, Vote & Order to Open Investigation (Feb. 3, 2004) (“D.T.E. 03-76”); *Annual returns proceeding for calendar year 2000*, D.T.E. 02-13, Vote & Order to Open Investigation (Apr. 8, 2002) (“D.T.E. 02-13”). The Department may also deem a common carrier’s failure to file an annual return as cause for cancellation of the company’s registration and intrastate tariff(s), thus preventing the company from operating and/or providing telecommunications services within the Commonwealth.¹ See D.T.C. 11-AR, Order C (June 3, 2013) (“*D.T.C. 11-AR-C*”), at 9-11; *Common Carrier Regulatory Treatment Order* at 12. Further, 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 and update its registration information. D.T.E. 02-13, Order B (Sept. 20, 2002), at 4; *D.T.C. 11-AR-C* at 11 (directing removal of several carriers’ payphone public access lines). Finally, the Department may assess statutory forfeitures against a common carrier deemed to be “doing business in the [C]ommonwealth” and failing to file an annual return. G. L. c. 166, § 12; D.T.C. 11-AR, Order A (June 3, 2013) (“*D.T.C. 11-AR-A*”), at 8-12.

Any common carrier “doing business” in the Commonwealth that neglects to file an annual return for a calendar year by the requisite deadline shall forfeit \$5.00 per day for the first fifteen days of delinquency, \$10.00 per day for the next fifteen days, and a sum not exceeding \$15.00 per day for each day thereafter until the company files its return. G. L. c. 166, § 12. If

¹ The Department recently amended the requisite affidavits of these registration forms to include bold language that specifies the “[r]egistrant understands that failure to comply will be grounds for the Department to cancel the [r]egistrant’s registration/SBO and tariff(s), thus preventing the [r]egistrant from operating and/or providing telecommunications services within Massachusetts.” *Application for Registration for Telecommunications Service Providers Other Than Payphone Service Providers – Statement of Business Operations* at 8; *Registering to Provide Pay Telephone Services in Massachusetts* at 8.

the Department determines that a common carrier “unreasonably refuses or neglects to make such return,” the company shall forfeit up to \$500 for each offence, as an additional penalty. *Id.*

The 17 common carriers identified below failed to file annual returns for calendar years 2010 and/or 2011. The Department lists the year(s) of delinquency for each of the common carriers (individually, “Delinquent Carrier,” and collectively, “Delinquent Carriers”), as well as the status of their registrations with the Secretary of the Commonwealth:

<u>Docket #</u>	<u>Carrier</u>	<u>Year(s) of Delinquency</u>	<u>Massachusetts Secretary of the Commonwealth Status</u>
DTC 13-AR-1	Genesis Fiber Communications, LLC	2011	registered/active
DTC 13-AR-2	Go Solo Technologies, Inc.	2011	registered/active
DTC 13-AR-3	Legacy Long Distance International, Inc.	2011	registered/active
DTC 13-AR-4	MMG Holdings, Inc.	2011	registered/active
DTC 13-AR-5	Telco Partners, Inc.	2011	withdrawal 10/11/2011
DTC 13-AR-6	EasyLink Services, Corp. fka Mail.com Business Messaging Services, Inc. aka EasyLink Services USA, Inc.	2010, 2011	registered/active
DTC 13-AR-7	G4 Telecom MA, LLC	2010, 2011	involuntary (“invol.”) dissolution 06/30/2013
DTC 13-AR-8	HRCA Housing For Elderly, Inc. dba Jack Satter House	2010, 2011	registered/active
DTC 13-AR-9	International Network Solutions, LLC	2010, 2011	invol. dissolution 06/30/2013
DTC 13-AR-10	New England Payphone, Inc.	2010, 2011	voluntary dissolution 02/19/2013
DTC 13-AR-11	NSC Service Corporation (“NSC Svc. Corp.”) aka NSC Communications Public Services Corporation (“NSC Comm. PSC”) dba NSC Communications	2010, 2011	NSC Svc. Corp: registered NSC Comm. PSC: invol. revocation 3/31/2008
DTC 13-AR-12	Pelzer Communications Corp.	2010, 2011	registered/active
DTC 13-AR-13	Rockland Health Group, LLC dba South Shore Rehabilitation & Skilled Care Center	2010, 2011	cancellation 06/15/2011
DTC 13-AR-14	STI Telecom, Inc.	2010, 2011	registered/active
DTC 13-AR-15	Telmex USA, LLC	2010, 2011	invol. dissolution 06/30/2013 reinstated 07/26/2013 registered/active
DTC 13-AR-16	Touch 1 Communications, Inc. dba Alabama Touch 1 Communications, Inc.	2010, 2011	invol. revocation 06/18/2012
DTC 13-AR-17	Tricom USA, Inc.	2010, 2011	withdrawal 05/10/2010

Each Delinquent Carrier was registered to provide telecommunications services in the Commonwealth for the relevant calendar year by having on file with the Department an approved tariff and SBO. *See* G. L. c. 159, §§ 12, 19; *Common Carrier Regulatory Treatment Order* at 12. As common carriers registered with the Department to provide telecommunications

services in Massachusetts, each of the companies was obligated to file annual returns with the Department. *See* G. L. c. 159, §§ 12, 19 & 32; G. L. c. 166, § 11.

For each year's filings, the Department provided the Delinquent Carriers with at least one written reminder of the filing requirement, as well as an extension of the deadline by which each had to file. Notwithstanding such extensions and notices, none of these Delinquent Carriers have filed their annual return(s). The notices mailed to several of the Delinquent Carriers were returned as "Undeliverable" or "Unknown" by the United States Postal Service to the Department.²

Accordingly, the Department hereby opens an investigation on its own motion into each of the Delinquent Carriers for failure to file annual returns. The Department will determine whether the Delinquent Carriers have neglected or refused to file annual returns and, if so, may cancel their registrations and intrastate tariffs. *See* G. L. c. 159, §§ 32, 39; G. L. c. 166, §§ 11, 12; D.T.C. 11-AR at 4-5; *D.T.C. 11-AR-A* at 1, 4-5; *D.T.C. 11-AR-C* at 1, 4-7; D.T.E. 05-95 at 3; D.T.E. 03-76 at 2; D.T.E. 02-13 at 3. If the Department deems a Delinquent Carrier to be "doing business" in Massachusetts, the Department may also assess statutory forfeitures. *See D.T.C. 11-AR-A* at 8-12. In reviewing a Delinquent Carrier's annual return obligations, the Department may consider, among other factors, the extent and nature of the company's operations within the Commonwealth as well as its revenues for each of the applicable years. *See* G. L. c. 159, § 32;

² The Department notes that a Delinquent Carrier's failure to update its contact information is a violation of another state law, which requires a "communications service provider" to file with the Department "information on its business entity, including, but not limited to, name, business address, contact person and the telephone number, fax number and e-mail address of such contact person," to be updated annually. G. L. c. 6A, § 18H(e). This Chapter defines "communications service providers" as those who provide: (a) the transmission, conveyance or routing of real-time, two-way voice communications to a point or between or among points by or through any electronic, radio, satellite, cable, optical, microwave, wireline, wireless or other medium or method, regardless of the protocol used; (b) the ability to provide two-way voice communication on the public switched network; (c) wireless enhanced 911 service; (d) wireline enhanced 911 service; (e) interconnected VoIP provider service as defined by FCC regulations; (f) IP-enabled service; or (g) prepaid wireless service. G. L. c. 6A, § 18A.

G. L. c. 166, § 11; *D.T.C. 11-AR-B* at 9-14. In addition, the Department may consider the Delinquent Carrier's registration status with the Secretary of the Commonwealth,³ and whether the company reported that it operates within Massachusetts on its Form 499-A filing with the Federal Communications Commission ("FCC").⁴ *See D.T.C. 11-AR-A* at 9-10. The Department may also consider whether the Delinquent Carrier failed to file updated address and contact information with the Department, or failed to update that same information in any applicable intrastate tariffs. *See D.T.C. 11-AR* at 5.

Each Delinquent Carrier named in this Order must attend the Department's evidentiary hearing, which is discussed below, and provide to the Department the following additional information in writing on or before January 3, 2014:

1. Whether the company filed the annual return for the relevant calendar year(s). If so, provide a copy of the annual return(s) and documentation of the filing(s). If not, explain why, and state whether the failure to file is reasonable.
2. Whether the company provided telecommunications services in Massachusetts during the relevant calendar year(s).
3. If applicable, state whether the Secretary of the Commonwealth has reinstated the company's authority to do business within the Commonwealth.
4. If applicable, provide the current company address, contact information, and an amended tariff and SBO reflecting that change.

If any Delinquent Carrier fails to attend the evidentiary hearing or timely provide the Department with the requested information, the Department may make adverse findings of fact, including that the company failed to file its annual return(s), and may order corrective action,

³ The Department acquires this information online from the Secretary of the Commonwealth's website at <http://corp.sec.state.ma.us/corpweb/corpsearch/CorpSearch.aspx> (last viewed Nov. 27, 2013).

⁴ The FCC requires all telecommunications providers to file FCC Form 499-A annually by April 1, with limited exception. *See* FCC, 2012 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A) at 2. The FCC reports submitted information on its FCC Form 499 Filer Database, *available at* <http://fjallfoss.fcc.gov/cgb/form499/499a.cfm> (last viewed Nov. 27, 2013).

including: cancelling the company's registration and intrastate tariff(s) on file with the Department; assessing statutory forfeitures; and referring the matter to the Attorney General for enforcement. *See* G. L. c. 159, § 39; G. L. c. 166, § 12; *D.T.C. 11-AR-A* at 8-15; *D.T.C. 11-AR-C* at 11-27.

The Department will conduct these investigations as adjudicatory proceedings, as defined in G. L. c. 30A, § 1(1). The Department initiates an independent proceeding for each Delinquent Carrier under investigation, and each proceeding will have a separate evidentiary record. The Department will, pursuant to the separate Notice of Investigation and Hearing, conduct hearings for each docket in this investigation on January 22, 2014, at 10:00 a.m. The Department will first convene a single public hearing on that day to receive comments from members of the public and the Legislature about any Delinquent Carrier. At the conclusion of the public hearing, the Department will conduct separate evidentiary hearings for each Delinquent Carrier. Evidentiary hearings will proceed in order of docket numbers D.T.C. 13-AR-1 through D.T.C. 13-AR-17 until completed.

The Department invites all interested persons who are substantially and specifically affected by the issues under investigation to petition to intervene in these proceedings. Petitions to intervene in these dockets must be filed with the Secretary of the Department by 5:00 p.m. on January 3, 2014, referencing the complete docket number assigned to a specific company.

III. ORDER

Accordingly, it is hereby:


ORDERED: That the Department opens investigations, docketed as D.T.C. 13-AR-1 through D.T.C. 13-AR-17, into the failure of 17 telecommunications common carriers to file annual returns for calendar years 2010 and/or 2011; and it is

FURTHER ORDERED: That the named common carriers must provide the Department with additional information in accordance with this order by January 3, 2014; and it is

FURTHER ORDERED: That petitions to intervene in this proceeding and written comments shall be filed with the Secretary of the Department by January 3, 2014; and it is

FURTHER ORDERED: That public and evidentiary hearings in this proceeding will be conducted on January 22, 2014, at the Department's offices.

By Order of the Department,



Geoffrey G. Why, Commissioner