BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Cancellation of the Certificate of Service Authority and Accompanying Tariff of Alticomm, Inc.	)))	Case No. XD-2006-_____

MOTION TO OPEN CASE AND CANCEL
CERTIFICATE OF SERVICE AUTHORITY AND ACCOMPANYING TARIFF

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and moves that the Commission open a case and cancel the certificate of service authority it granted to Alticomm, Inc. to provide intrastate interexchange telecommunications services, as well as its tariff. In support of its Motion, Staff respectfully states as follows:

1. In May 2003, the Missouri Public Service Commission (Commission) issued its order granting a certificate of service authority to Alticomm, Inc. to provide intrastate interexchange telecommunications services in Case No. LA-2003-0305. The company's tariff, P.S.C. Mo. Tariff No. 1, was approved in the same case.

2. Alticomm, Inc. is a Massachusetts corporation and appears to be in good standing in Massachusetts. However, according to the Massachusetts Secretary of the Commonwealth's website, the last filing made by Alticomm, Inc. was its 2003 annual report.

3. The Missouri Secretary of State revoked the Company's certificate of authority to do business in Missouri on July 15, 2004 because it failed to file its Annual Registration Report. Section 351.602 RSMo. (2000) governs the procedure and effect of revocation. Section 351.602.3 states that "[t]he authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority."

4. Alticomm, Inc. owes no assessments to the Commission. In keeping with the fact that the company has ceased its operations, it has not submitted a calendar year 2004 annual report.

5. On June 8, 2004, Alticomm, Inc. voluntarily sought bankruptcy protection under Chapter 11 of the Federal bankruptcy code in the District of Massachusetts, Eastern Division in Bankruptcy Petition #04-14803-CKJ. The case was closed on September 7, 2004, when Alticomm, Inc.'s motion to dismiss the case was granted. In its motion, counsel for the company indicated that the company was "presently winding down its business operations" and "essentially conducting an orderly liquidation of its own assets." See Attachment A, introductory paragraph. Further indication that the company has ceased operations stems from the statement that Alticomm, Inc., "has laid off all of its personnel." Attachment A, paragraph 10.

6. Staff attempted to contact Alticomm, Inc. using both the toll-free and standard telephone numbers provided to the Commission by the company, but all numbers have been disconnected.

7. Staff is not aware that Alticomm, Inc. has provided interexchange telecommunications services to any Missouri customers under its certificate of service authority. No customers have contacted the Commission to make complaints about Alticomm, Inc. since the commencement of the Commission's EFIS system. According to its interexchange annual report for 2003, the company had no Missouri revenues and, accordingly, no Missouri customers.

8. The Commission has the authority to cancel a telecommunications corporation certificate pursuant to Section 392.410.5 RSMo (Supp. 2004), which provides:

> Any certificate of service authority may be altered or modified by the commission after notice and hearing, upon its own motion or upon application of the person or company affected.

9. The Commission need not hold a hearing, if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. 1989).

10. Thus, the Commission has the authority to cancel the certificate of service authority it granted to Alticomm, Inc. in Case No. LA-2003-0305 to provide intrastate interexchange telecommunications services, as well as the company's tariff, P.S.C. Mo. Tariff No. 1. Such an action is supported because the company has no authority to transact business in the State of Missouri under Section 351.602.3, and because it appears the company has no Missouri customers, nor does it intend to provide service in Missouri.

11. This pleading is being served via certified mail upon the address the company has previously provided the Commission, as well as the company's registered agent in Missouri.

WHEREFORE, the Staff moves that the Commission cancel the certificate of service authority it granted to Alticomm, Inc. in Case No. LA-2003-0305 to provide intrastate interexchange telecommunications services, as well as the company's tariff, P.S.C. Mo. Tariff No. 1.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ David A. Meyer

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to the following this 10th day of August 2005.

/s/ David A. Meyer

Office of the Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

Alticomm, Inc.
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Westwood MA 02090
(via certified mail)

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300 – B East High Street
Jefferson City, MO 65101

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re	)	**Chapter 11**
	)	
ALTICOMM, INC.,	)	**Case No. 04-14803-CJK**
	)	
Debtor.	)	

MOTION OF DEBTOR ALTICOMM, INC.
FOR AN ORDER DISMISSING BANKRUPTCY CASE

AltiComm, Inc., the debtor and debtor in possession herein (the "Debtor"), hereby moves for entry of an order dismissing the Debtor's above-captioned bankruptcy case. Since the Debtor is presently winding down its business operations, and working consensually with its secured creditors and the operating telephone company subsidiaries of Verizon Communications Inc. (collectively, "Verizon") to maximize the value of prepetition collateral, and postpetition accounts receivables, the Debtor is essentially conducting an orderly liquidation of its own assets. Because the Debtor is ceasing its business, there is a continuing loss to the Debtor's estate, and there is no reasonable likelihood of rehabilitation. Accordingly, "cause" exists to dismiss the Debtor's Chapter 11 case. Likewise, there is no benefit to unsecured creditors in the context of a Chapter 7, where the accrued postpetition expenses and prepetition secured claims render the Debtor's estate unable to offer any kind of distribution to unsecured creditors.

In support of this motion ("Motion"), the Debtor respectfully represents as follows:

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§157 and 1334. This is a "core" proceeding pursuant to 28 U.S.C. §157(b). Venue is proper in this district pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicate for the relief requested herein is 11 U.S.C. §§ 363(c)(2)(B) and (c)(3).

Background

2. On June 8, 2004 (the "Petition Date"), the Debtor commenced this reorganization case by filing a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C.

Attachment A

§101, et seq. (the "Code").

3. The Debtor continues to operate its business and manage its affairs as debtor-in-possession pursuant to Sections 1107 and 1108 of the Code.

4. The Debtor is a Massachusetts corporation that provides telecommunications and management services with a principal place of business at 60 Glacier Drive, Suite 3000, Westwood, Massachusetts.

5. This case was filed primarily as a result of certain disputes the Debtor had with Verizon resulting from the Debtor's failure to render payment for certain services provided by Verizon. On information and belief, prior to the Debtor's filing, Verizon was intending to compel the Debtor to provide notices of termination of service to certain end-user customers that the Debtor served through its management agreement with Servisense.com, Inc., which would have, and as set forth in more detail below did, effectively shut the Debtor's business operations down.

POST PETITION ACTIVITIES WARRANTING DISMISSAL

A. Denial of Use of Cash Collateral and Payment of Wages

6. On June 14, 2004, the Debtor filed the Debtor's Emergency Motion for Interim and Final Orders Authorizing the Debtor's Use of Cash Collateral (the "Cash Collateral Motion"), the Emergency Motion for Order Authorizing Debtor to Pay Certain Pre-Petition Wages, Payroll Taxes, Employee Benefits and Reimbursable Wages (the "Wage Motion"), as well as a motion requesting an emergency hearing. Through the Cash Collateral Motion, the Debtor sought use of cash collateral of its two secured prepetition lenders, BankNorth N.A. Massachusetts f/k/a Warren Bank ("BankNorth")[1] and Qwest Communications Corporation ("Qwest")[2] in order to operate its business in the normal course in the

[1] As of the Petition Date, the Debtor allegedly was indebted to BankNorth in the approximate sum of $680,000. BankNorth allegedly maintains liens upon substantially all assets of the Debtor.

[2] As of the Petition Date, the Debtor allegedly was indebted to Qwest in the approximate sum of $52,900. Qwest allegedly maintains liens upon a significant portion of the Debtor's assets.

amounts and purposes set forth in the budget attached thereto. In the Wage Motion, the Debtor sought to pay certain prepetition wages, taxes and the like in the approximate sum of $61,388.

7. On June 16, 2004, this Court held a hearing on the Cash Collateral and Wage Motions. During the hearing, Verizon, as well as the United States Trustee, voiced concerns as to the Debtor's cash flow, and whether payment of the prepetition wages, taxes and the like would effectively render the Debtor administratively insolvent. At the conclusion of the hearing, this Court denied both motions, and echoed the concerns of Verizon and the United States Trustee that it did not foresee that the Debtor's case was a viable Chapter 11.

B. Notices of Termination of Service to End Users

8. One day after the Debtor filed the Cash Collateral Motion and the Wage Motion, Verizon filed, among other things, its Emergency Motion of the Operating Subsidiaries of Verizon Communications Inc. to Compel AltiComm, Inc., or the Liquidating Supervisor of the Estate of Servisense.com, Inc., to Provide Disconnection Notices to End Users, and Provide Security for Payment of Telecommunications Services (the "Motion to Compel").[3] Because of the Debtor's failure to pay approximately $310,000 under the Agreed Order Extending Management Agreement Through and Including July 31, 2004, entered in the Servisense.com, Inc. Chapter 11 case (Case No. 01-46539-WCH), Verizon sought an order of this Court requiring the Debtor to provide notice to end users of the discontinuance of service, and additionally sought an order requiring the Debtor to provide Verizon with a deposit equal to the value of two months of service to ensure Verizon's receipt of payment for postpetition services rendered to the Debtor's customers and Servisense.com, Inc.

9. On June 23, 2004, this Court held a hearing on the Motion to Compel, and entered an order requiring that the Debtor "immediately comply with all applicable state and federal regulatory

[3] The background of events precipitating the Motion to Compel are set forth in detail therein, and, accordingly, will not be repeated here.

requirements relating to customer notification of service termination". However, this Court did not require the Debtor to provide a deposit to Verizon with respect to post petition services.

10. Since June 23, 2004, the Debtor (i) sought and has received, approval of the form of notices from the regulatory commission overseeing such notices in all states where Verizon is the underlying carrier and has obtained such approvals in all other states, and (ii) has sent notices of termination of services to all of the Debtor's prior customers. Notices were mailed on or before July 21, 2004. In addition, the Debtor has laid off all of its personnel, and has not rendered any payment to employees on account of prepetition, or postpetition work performed. BankNorth has funded the costs of the termination notices.

C. BankNorth's Relief from the Automatic Stay

11. On or about June 30, 2004, BankNorth filed its Assented to Emergency Motion of BankNorth, N.A. for Relief from the Automatic Stay (the "Motion for Relief from Stay"), seeking this Court's authority to exercise its rights as a secured creditor with respect to its collateral, which consists mainly of accounts receivable. Through the Motion for Relief from Stay, BankNorth asserted that the Debtor has no equity in BankNorth's collateral, nor was such collateral necessary for an effective reorganization because the Debtor was in the process of winding down its business affairs. The Debtor assented to the Motion for Relief from Stay

12. After a hearing on July 1, 2004, this Court entered an order granting BankNorth's Motion for Relief from Stay.

13. In order to effectuate this Court's order and mail the required termination notices, and to protect its collateral and ensure the timely billing and collection of outstanding bills, BankNorth has retained a limited number of former employees of the Debtor as contractors. To date, BankNorth has made approximately $40,000 in contractor payments.

RELIEF REQUESTED

A. Overview

14. The Debtor believes that it is in the best interests of creditors and the estate for the Debtor

to continue to pursue, in cooperation with its secured creditors, an orderly liquidation of its assets, if any, outside the protections of the Bankruptcy Code. Because the collateral at issue in this case is likely not even sufficient to satisfy the secured creditors BankNorth and Qwest, there is no prospect of a financial reorganization under Chapter 11. The Debtor is working consensually with BankNorth to maximize the return on BankNorth's collateral and, upon dismissal, will continue the wind down of its business affairs in an orderly fashion. Although the secured creditors in this case are protected by their various liens, and thereby do not suffer the risk that there will be no monies to pay their claims, there is little to be accomplished through a Chapter 7, as it is highly unlikely that any funds will be available to distribute to creditors after payment of post petition expenses, including employee wages.

B. Applicable Law

15. Pursuant to 11 U.S.C. § 1112(b) and Fed. R. Bankr. P. 1017, the Debtor seeks the entry of an order dismissing its bankruptcy case, as described more fully below. Under § 1112(b), this Court may, on request of a party in interest, and after notice and a hearing, dismiss the above-captioned bankruptcy case for "cause." Although the Bankruptcy Code does not define "cause", and, although § 1112(b) lists ten examples of "cause", including continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation, this list is not exhaustive. Accordingly, this Court may also dismiss a case for reasons that are not specifically enumerated in the section, provided that such reasons are sufficient to demonstrate the existence of cause. *See, e.g.*, In re Gonic Realty Trust, 909 F.2d 624, 626 (1st Cir. 1990). "Section 1112(b) was designed to provide the court with a powerful tool to weed out inappropriate chapter 11 cases at the earliest possible stage." 7 *Collier on Bankruptcy*, ¶1112.04, p. 1112-26 (15th ed.).

16. As a general rule, if continuing a particular Chapter 11 case would promote the twin goals of preserving viable businesses and maximizing the creditors' return, then the case is probably not a candidate for dismissal under Section 1112(b). 7 *Collier on Bankruptcy*, ¶1112.04, p. 1112-26 (15th ed.). In this case, however, continuing operations of this Debtor in Chapter 11 would be counterproductive.

The Debtor believes dismissal is the appropriate outcome where, as here, there is little to be accomplished through a conversion of this case to Chapter 7.

C. **Argument**

1. The Debtor Has No Reasonable Likelihood of Rehabilitation

17. The Debtor submits that "cause" exists to dismiss this Chapter 11 case because there is no reasonable likelihood of rehabilitation in a Chapter 11. The Debtor and BankNorth are working consensually with respect to maximizing the value of BankNorth's collateral, as well as the post petition accounts receivable against which Verizon arguably has an administrative claim against. Moreover, the Debtor and BankNorth have reached an agreement with Verizon to provide Verizon payment for certain postpetition services it has provided, which is conditioned upon dismissal of this case. The agreement by and between the Debtor, BankNorth and Verizon, which the Debtor seeks approval for in connection with the dismissal, is attached hereto as Exhibit A.

18. Since the Petition Date, the Debtor estimates that it has generated approximately $600,000 in receivables, but has been unable to bill and collect on those receivables due to the denial of its Cash Collateral Motion. The likelihood of collecting bills sent after a termination notice has been received is uncertain and unknown.

19. The Debtor has accrued approximately $85,000 in unpaid post petition wages on account of services performed by employees with respect to essential business wind down, including attempting to collect receivables. The Debtor estimates that it can satisfy these obligations if it can dismiss the Chapter 11 case, and use cash, on the terms and conditions agreed to by BankNorth in order to bill and collect accounts receivable.

20. Accordingly, the best interests of all of the Debtor's creditors, are better served by payment of ongoing postpetition expenses, along with a coordinated collection of BankNorth's collateral, without the additional burden of accruing administrative expense claims from operating under Chapter 11, which claims potentially dilute any available recovery for the remaining creditors. The creditors' returns in this case are maximized by dismissal of this case.

2. There is Little Likelihood of Payment to Unsecured Creditors in a Chapter 7 Case

21. Operating in Chapter 11 has caused substantial harm to the Debtor's business operations, and because the Debtor was recently required to provide notices of termination to its end users, the Debtor's business is effectively concluded. Given the amount of secured debt and the unpaid employee wages, there is little, if any, prospect of a dividend to unsecured creditors in the context of a Chapter 7 case, there is little reason to incur further administrative and professional expense.[4] Accordingly, the Debtor requests dismissal of its Chapter 11 case, and the entry of the form of dismissal order substantially in the form attached hereto as Exhibit B.

NOTICE

22. Notice of this Motion has been given to (a) the U.S. Trustee; (b) each of the Debtor's creditors[5]; and (c) the parties that have filed requests for notices in this case pursuant to Fed. R. Bankr. P. 2002. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice be required.

WHEREFORE, the Debtor respectfully requests that this Court enter an order: (a) allowing this Motion; (b) dismissing the Debtor's Chapter 11 case; and c) granting it such other and further relief as this Court deems just and proper.

Dated: August 16, 2004

By its attorneys,

/s/ Jennifer L. Hertz
Paul D. Moore (BBO # 353100)
Jennifer L. Hertz (BBO # 645081)
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[4] Indeed, the Debtor's Schedules, filed on July 27, 2004, indicate assets in the approximate amount of $875,138, encumbered by liabilities of well over $10 million.

[5] In order to preserve costs, the Debtor has served Exhibit A to the Motion on its list of 20 largest unsecured creditors. The remaining creditors may request a copy of Exhibit A by contacting the undersigned.