

**Minnesota Public Utilities Commission**  
*Staff Briefing Paper*

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Meeting Date: January 14, 2016.....\*\* Agenda Item # 2

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Companies: Alliance Connect, LLC; LightEdge Solutions, Inc. & LH Telecom, Inc.

Docket No. P-6954/NA-15-847  
In the Matter of the Application of Alliance Connect, LLC to obtain Commission Approval to Provide Local Resale and Interexchange Telecommunications Services

P-6954, 6452/PA-15-893  
In the Matter of the Join Application of LightEdge Solutions, Inc., LH Telecom, Inc. and Alliance Connect, LLC to Transfer Assets and Customers

Issues: Should the Commission modify its *New Authority Order* and its *Asset Transfer Order* as recommended by the Minnesota Department of Commerce?

Staff: Kevin O’Grady .....651-201-2218

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***Relevant Documents***

Order Granting New Authority (15-847) ..... October 30, 2015  
Order Approving Asset Transfer (15-893).....December 2, 2015  
Alliance Connect Request for Modification of Authority (15-847).....December 7, 2015  
DOC Reply Comments .....December 14, 2015

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The attached materials are work papers of Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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## ***Background***

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**On October 30, 2015**, the Commission granted to Alliance Connect (Alliance) a certificate of authority to offer resold local and long distance services in a number of exchanges in Minnesota (*New Authority Order*; 15-847). One of the conditions placed on that approval is Commission approval of a 911 plan.

**On December 2, 2015**, the Commission approved the transfer of assets and customers from LightEdge Solutions (LightEdge) to Alliance (*Asset Transfer Order*; 15-893). One of the conditions placed on that approval is Commission approval of a 911 plan.

**On December 7, 2015**, Alliance sought removal of the conditions related to the submission of a 911 plan.

**On December 14, 2015**, the Minnesota Department of Commerce (DOC) filed reply comments recommending modification of the two *Orders*, in part, to accommodate the request of Alliance.

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## ***Procedural Issues***

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The two *Orders* at issue were issued via the Commission's consent order process. That process is rooted in Minn. Stat. § 216A.03. Pursuant to § 216A.03, Subd. 8(a) the Commission is empowered to delegate to a subcommittee of at least one Commissioner "any of the commission's legislative, administrative, or quasi-judicial functions ... ." And by the terms of the Commission's consent orders "[u]nless a party, a participant, or a Commissioner files an objection to this decision within ten days of receiving it, it will become the Order of the full Commission under Minn. Stat. § 216A.03, subd. 8 (b)."<sup>1</sup>

Although both orders were issued via the consent process their procedural stances differ today in that the objection filed by Alliance, for one order, falls within the ten-day objection window (*Asset Transfer Order* (15-893)), while the objection, for the other order, falls beyond the ten-day window (*New Authority Order* (15-847)).

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<sup>1</sup> Both *Orders* contain this language.

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### ***New Authority Order (15-847)***

The *New Authority Order* was issued on October 30, 2015, more than ten days prior to Alliance's request for clarification on December 7, 2015. As such, that *Order* stands. Pursuant to Minn. Stat. § 237.081, Subd. 1, the Commission has authority to investigate the matter: "Whenever the commission believes ... that an investigation of any matter relating to any telephone service should for any reason be made, it may on its own motion investigate the service or matter with or without notice ... ." Staff believes the parties to the two dockets have been served the petitions of Alliance and DOC, and the Commission may proceed to examine the merits of those petitions.

### ***Asset Transfer Order (15-893)***

The *Asset Transfer Order* was issued on December 2, 2015, and five days later AC filed its request for clarification. Minn. Stat. § 216A.03, subd. 8 (b) dictates that "[u]pon objection by a party, a participant, or a commissioner, a decision by a subcommittee must be referred to the full commission." This issue, too, has been noticed and is properly before the Commission.

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## ***Positions of the Parties***

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### **Note**

Alliance sought authority to operate in Minnesota. Additionally, Alliance sought to purchase the customers and assets of LightEdge. LightEdge (seller) offered nomadic VoIP services in Minnesota utilizing the facilities of LH Telecom, a wholly owned subsidiary of LightEdge. LH Telecom is authorized to operate in Minnesota. Alliance (buyer), at this time, plans to offer nomadic VoIP services in Minnesota.

### **Alliance Connect Position**

Alliance argues that it will be providing nomadic VoIP service in Minnesota as did LightEdge, from whom Alliance purchased assets and customers. Alliance believes that under current statutes and rules it is not required to provide a 911 plan.

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**DOC Position**

DOC states that Alliance submitted a 911 plan for approval by the Minnesota Department of Public Safety (DPS) and that DPS would not accept Alliance's 911 plan without more investment than it was willing to make. Thus Alliance seeks elimination of the 911 plan condition.

DOC supports elimination of the 911 plan condition in the Alliance *Orders* because the Commission has not asserted its jurisdiction over nomadic VoIP services.

DOC also recommends that the Commission modify its *New Authority Order* to restrict Alliance's authority to the provision of niche services, that is, "point-to-point connections between end-user locations within a service area and any telecommunications services under the commission's jurisdiction that do not fall within the definition of local service or the definition of interexchange service." [Minn. Rules 7811.0100, Subp. 31]

DOC further recommends the Commission eliminate the condition in the *Orders* requiring Alliance to obtain Commission-approved ICAs because AC has already satisfied that condition.

DOC also recommends the elimination from the *Asset Transfer Order* the requirement that Alliance collect and remit 911 fees.

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***Staff Comments***

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Staff generally supports the DOC recommendations.

Staff supports elimination of the condition requiring the approval of ICAs; this condition appears to have already been met. On the other hand, for the same reason, retaining this condition does no harm.

Staff supports modifying Alliance's certificate to limit its authority to the provision of niche services in the requested exchanges. If Alliance seeks to provide regulated voice services in the future it may apply for expanded authority.

Staff supports elimination of the requirement to obtain an approved 911 plan. The Commission has not asserted authority over nomadic VoIP services.

Staff supports elimination of the requirement to collect and remit 911 fees. Chapter 237 does not mandate the collection and remission of 911 fees. That mandate derives from Chapter 403, *911 Emergency and Public Safety Communications* under the authority of the Commissioner of DPS.

Minn. Stat. § 403.11, Subd. 1(a), states, in part:

Each customer of a wireless or wire-line switched or packet-based telecommunications service provider connected to the public switched telephone network that furnishes service capable of originating a 911 emergency telephone call is assessed a fee ... to cover the costs of ongoing maintenance and related improvements ...

Subdivision 1(d) states, in part:

The fee must be collected by each wireless or wire-line telecommunications service provider subject to the fee. Fees are payable to and must be submitted to the commissioner monthly ...

By the terms of Minn. Stat. § 403, DPS may be asserting authority over nomadic VoIP services. DPS may assert its authority as it deems appropriate. Action by this Commission to require Alliance and LightEdge to collect and remit fees may be seen as an indirect assertion by the Commission that it possesses such authority. Staff does not believe this docket is the forum in which the Commission should assert authority over nomadic VoIP service.

The *Asset Transfer Order* currently includes two conditions imposed on LightEdge/LH as recommended by DOC, conditions that may be better described as analytical comments rather than binding conditions. They are:

LH has no Minnesota NXX codes and no codes are being transferred to Buyer in Minnesota. No need to release or return NXX codes to the North American Numbering Plan Administration (NANPA) is anticipated, and

USAC does not need to be notified because Seller does not receive Universal Service Fund payments.

Inclusion of these two terms has no substantive effect on the parties. If the Commission chooses to modify the *Asset Transfer Order* for other reasons Staff recommends elimination of these two terms.

Staff recommends that the Commission, on its own motion, modify its orders as follows:

With respect to the *New Authority Order* (15-847):

- A. Modify Alliance Connect's certificate of authority to limit that authority to the provision of niche services in the requested exchanges.
- B. Eliminate the conditions requiring Alliance Connect to (1) obtain an approved 911 plan and (2) obtain approved interconnection agreements.

With respect to the *Asset Transfer Order* (15-893):

- C. Eliminate the conditions requiring Alliance Connect to (1) obtain an approved 911 plan, (2) collect and remit 911 fees, and (3) obtain approved interconnection agreements.
- D. Eliminate the conditions requiring LightEdge/LH Telecom to collect and remit 911 fees, and eliminate the analytical statements regarding NXX codes and notification of USAC.

### **Commission Options**

- I. Deny requests to modify the *New Authority Order* and the *Asset Transfer Order*.
- II. On the Commission's own motion modify the *Orders* as follows:

With respect to the *New Authority Order* (15-847):

- A. Modify Alliance Connect's certificate of authority to limit that authority to the provision of niche services in the requested exchanges.
- B. Eliminate the conditions requiring Alliance Connect to (1) obtain an approved 911 plan and (2) obtain approved interconnection agreements.

With respect to the *Asset Transfer Order* (15-893):

- C. Eliminate the conditions requiring Alliance Connect to (1) obtain an approved 911 plan, (2) collect and remit 911 fees, and (3) obtain approved interconnection agreements.
- D. Eliminate the conditions requiring LightEdge/LH Telecom to collect and remit 911 fees, and eliminate the analytical statements regarding NXX codes and notification of USAC.

III. Take other action.

Staff recommends option II.