

UNITED STATES TELECOMMUNICATIONS, INC.

ORIGINAL

**d. b. a.
TEL COM PLUS**



December 6, 2002

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

RE: Protest related to the issuance of a certificate to provide alternative local exchange telecommunications service to Midwestern Telecommunications, Incorporated (TX688, Docket 020922)

Dear Ms. Bayo:

Please find enclosed an original and five copies of United States Telecommunications Inc., d/b/a Tel Com Plus protest of the application of Midwestern Telecommunications, Incorporated "MTI" for a license to provide local exchange services in the state of Florida.

Please feel free to call me at 727-418-2629 with any questions

Very Truly Yours,

Maurice Franklin
United States Telecommunications, Inc.

CC: Jessica Elliott - General Counsel
Nancy Pruitt - Division of Competitive Markets & Enforcement

Attachment

- AUS
- CAF
- CMP
- COM
- OTR
- ECR
- OCL
- OPC
- MMS
- SEC
- OTH

Handwritten notes:
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Done 12/11/02

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DISTRIBUTION CENTER

DOCUMENT NUMBER - DATE

13413 DEC-92

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Protest of United State)	
Telecommunications for commission)	
proceedings to disapprove Midwestern)	
Telecommunications, Incorporated)	_____
request to provide alternative local)	Filed on December 9, 2002
exchange telecommunications service)	

United States Telecommunication, Inc. ("UST") files this protest requesting proceedings before the Florida Public Service Commission seeking disapproval of Midwestern Telecommunications, Incorporated's ("MTI") (TX688) application for the issuance of a certificate to provide alternative local exchange telecommunications in the state of Florida (Docket 020922).

The Principal office of MTI is as follows:

Midwestern Telecommunications, Incorporated
 Jerry Holt
 4749 Lincoln Mall Drive, Suite 600
 Matteson, IL 60443-3813
 Phone: (708) 679-5050
 Fax: (708) 679-5062

During October 2001 until July 2002 UST operated in Illinois, Michigan, California, and Indiana through a contract with Vertex. Vertex had an interconnection agreement with Ameritech and provided better rates than Ameritech had previously provided to us. UST provisioned, disconnect and serviced the current lines with Vertex. At the end of July 2002 UST entered into an agreement with another Company to provide the same services as Vertex. UST migrated all lines held by Vertex to the new Company.

Since Vertex carried UST's lines they had access to all UST's subscriber information. Without UST's knowledge, consent or contractual right Vertex transferred this information to MTI. MTI immediately began soliciting UST's customers directly through telemarketing and direct mail. MTI informed UST customers that UST was going out of business and the phone lines are being disconnected (see Exhibit A of the lawsuit enclosed for an example of this letter). Both statements were false.

UST had migrated to the new Company and the customers service was never in jeopardy of being disconnect. UST started to lose customers since they were frightened of losing their service due to the false claims.

UST became aware of MTI action and contacted them instructing them to cease and desist (see Exhibit B of the lawsuit enclosed). MTI ignored these instructions and continued to contact UST's customers. The actions of MTI caused damage to UST's business in these four states, which are being addressed in the Florida court system. See the enclosed lawsuit.


DOCUMENT NUMBER-DATE

13413 DEC-98

FPSC-COMMISSION CLERK

Based on MTI actions in other states we feel it would be inappropriate for the Florida PSC to allow MTI to provide alternative local exchange telecommunications service in the state of Florida.

Respectfully submitted on December 9, 2002.

By: 
Maruice Franklin
5251 110th Ave. North, Ste 118
Clearwater, Florida 33760
Phone 727-418-2629

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES TELECOMMUNICATIONS,
INC., a Florida corporation, d/b/a TELCOM PLUS,

Plaintiff,

v.

Case No.: 8:02 - CV - 1850 - T -

MIDWESTERN TELECOMMUNICATIONS, INC.,
a foreign corporation,

26TBM

Defendant.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF
AND DEMAND FOR JURY TRIAL

Plaintiff, United States Telecommunications, Inc., (hereinafter "TELCOM PLUS")
sues Defendant, MIDWESTERN TELECOMMUNICATIONS, INC. ("MTI") and says:

1. This is an action for damages which exceed \$75,000.00, and for injunctive and other equitable relief.
2. TELCOM PLUS is now as at all times herein mentioned, a duly organized, validly existing Florida corporation with its principal place of business in Pinellas County, Florida.
3. Defendant MTI is an Illinois corporation with its principal place of business in Matteson, Illinois.
4. TELCOM PLUS is a licensed competitive local exchange carrier, providing telecommunications services to customers in 27 States, including, Florida, Illinois, California, Michigan and Indiana.
5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1331.

6. MTI is subject to personal jurisdiction in this district pursuant to §48.193(1)(a), Fla. Stat., as a result of operating, conducting, engaging in, or carrying on a business or business venture in this State, or having an office or agency in this State, pursuant to §48.193(1)(b), Fla. Stat., as a result of having committed tortious acts in this State and pursuant to §48.193(2), Fla. Stat, as a result of being engaged in substantial and not isolated activity within this State.

7. On or about August 23, 2001, TELCOM PLUS entered into a Reseller Agreement with Personal Office, Inc., pursuant to which Personal Office, Inc. agreed to resell to TELCOM PLUS certain telecommunications services, including local dial tone service, which TELCOM PLUS would, in turn, resell to its customers. Personal Office, Inc. then subcontracted its obligation under the Reseller Agreement to Vertex Broadband, Inc. ("Vertex"), which itself had an interconnection agreement with Ameritech, and thus access to the platform/infrastructure needed to provide the services TELCOM PLUS acquired from Personal Office, Inc. In connection with performing its contract, Vertex became privy to and had access to the names, addresses and telephone numbers of TELCOM PLUS' customers.

8. On or about July 23, 2002 TELCOM PLUS entered into an agreement with TallGrass Communications Inc. ("TallGrass") pursuant to which TallGrass will provide the platform for service of certain TELCOM PLUS customers, essentially replacing Vertex in that role.

9. Accordingly, on or about July 29, 2002, TELCOM PLUS began migration of its customer lines from Vertex to TallGrass.

10. Vertex, without the authorization or consent of TELCOM PLUS or its customers, sold or otherwise transferred to MTI, a competitor of TELCOM PLUS, the

names, addresses and telephone numbers of TELCOM PLUS' customers in Illinois, California, Michigan and Indiana.

11. Once MTI obtained the names, addresses and phone numbers of TELCOM PLUS' customers it immediately began to illegally and aggressively solicit TELCOM PLUS' customers through a telemarketing and direct mail campaign of disparagement and lies.

12. Specifically, but without limitation, telemarketers engaged by MTI telephoned customers of TELCOM PLUS and advised them that TELCOM PLUS was "going out of business" that TELCOM PLUS' "phone lines are being disconnected" and that unless the customers switched their lines to MTI their "phone will be disconnected".

13. Further, MTI sent written direct mail solicitations to TELCOM PLUS customers, an example of which is attached as Exhibit "A" (the customer's name, address and phone number having been redacted). Virtually every statement in the written solicitation is false. For example, the written solicitation begins with a sentence, in all capital letters, which reads "YOUR TELEPHONE IS DUE TO BE DISCONNECTED ON OCTOBER 14, 2002." In fact, the telephone service of TELCOM PLUS' customers is not due to be disconnected, and will not be disconnected on that or any other date. The migration of the TELCOM PLUS customer lines from Vertex to TailGrass results in no interruption of service to TELCOM PLUS' customers.

14. The direct mail solicitation is clearly designed to frighten TELCOM PLUS' customers into transferring their service from TELCOM PLUS to MTI. It falsely represents that the impending "disconnection" is a result of TELCOM PLUS "defaulting on payments owed to the dial tone provider of your service." It repeatedly states that any customers that stay with TELCOM PLUS will have their phone service

disconnected. It even goes so far as to state that MTI will offer a better deal than the customers are receiving from TELCOM PLUS.

15. Immediately upon learning of the actions of MTI, TELCOM PLUS and TallGrass contacted MTI and instructed it to cease and desist its illegal activity. Further, TELCOM PLUS issued a cease and desist letter, a copy of which is attached as Exhibit "B".

16. Notwithstanding these efforts, MTI has continued its illegal and tortious activity, resulting in damage to TELCOM PLUS.

17. All conditions precedent to the institution of this action have occurred or otherwise been performed.

COUNT I

18. TELCOM PLUS realleges and incorporates herein paragraphs 1 through 17 above.

19. This is an action for violation of the Lanham Act, 15 U.S.C. § 1125(a) arising out of the false advertising of Defendant MTI.

20. MTI's actions as aforesaid constitute violations of 15 U.S.C. § 1125(a).

21. MTI's actions were malicious, deliberate, willful, fraudulent and in bad faith.

22. TELCOM PLUS has been damaged as a result of MTI's actions.

WHEREFORE, TELCOM PLUS requests this Court enter judgment against MTI for its damages, costs of this action, attorney fees pursuant to 15 U.S.C. § 1117(c), and such other relief as may be just and appropriate.

COUNT II

23. TELCOM PLUS realleges and incorporates herein paragraphs 1 through 17 above.

24. This is an action for damages arising out of the unfair competition of MTI.

25. Through the actions described above, MTI has engaged in common law unfair competition.

26. TELCOM PLUS has been damaged as a result of MTI's actions.

WHEREFORE, TELCOM PLUS requests this Court enter judgment against MTI for damages, interest, costs and for such other and further relief as may be just and appropriate.

COUNT III

27. TELCOM PLUS realleges and incorporates herein paragraphs 1 through 17 above.

28. This is an action for damages arising out of MTI's tortious interference with TELCOM PLUS' contractual and business relationships.

29. TELCOM PLUS has advantageous contractual and business relationships with its customers.

30. The existence of these relationships are known by MTI.

31. MTI has intentionally and without justification interfered with the contractual business relationship between TELCOM PLUS and its customers.

32. TELCOM PLUS has been damaged as a result of MTI's interference.

WHEREFORE, TELCOM PLUS requests this Court enter judgment for damages against MTI for damages, interest, cost and such other relief as may be just and appropriate.

COUNT IV

33. TELCOM PLUS realleges and incorporates herein paragraphs 1 through 17 above.

34. This is an action for fraud against Defendant MTI.

35. The statements made by MTI to TELCOM PLUS' customers referred to in paragraphs 12 through 14 above, and as indicated on Exhibit "A" hereto are false, were known by MTI to be false when made, misrepresented material facts to the customers of TELCOM PLUS, intending to induce those customers to rely on those misrepresentations, all to the detriment of TELCOM PLUS.

36. TELCOM PLUS has been damaged as a result of the fraud committed by MTI.

WHEREFORE, TELCOM PLUS requests this Court enter judgment against MTI for damages, interest, cost of this action and such other and further relief as may be just and appropriate.

COUNT V

37. TELCOM PLUS realleges and incorporates herein paragraphs 1 through 17 above.

38. This is an action for injunctive relief against Defendant MTI.

39. As a result of the aforesaid acts of MTI, UST has been irreparably harmed.

40. UST has no adequate remedy at law.

WHEREFORE, TELCOM PLUS requests this Court enter an order enjoining, Defendant MTI temporarily and permanently from engaging in the unlawful solicitation of TELCOM PLUS's customers, as described above.

COUNT VI

41. TELCOM PLUS realleges and incorporates herein paragraphs 1 through 17 above.

42. This is an action for damages against Defendant MTI arising out of MTI's defamatory, slanderous and libelous acts.

43. Defendant MTI, through its illegal telemarketing and direct mail solicitation of the customers of TELCOM PLUS has slandered, libelled and otherwise defamed TELCOM PLUS.

44. TELCOM PLUS has been damaged as a result of MTI's action.

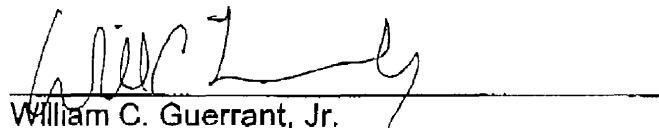
WHEREFORE, TELCOM PLUS requests this Court enter judgment against MTI for damages, costs of this action and such other relief as may be just and appropriate.

DEMAND FOR JURY TRIAL

45. TELCOM PLUS demands trial by jury on all matters so triable.

DATED: October 10, 2002

Respectfully submitted,



William C. Guerrant, Jr.
Florida Bar No. 516058
HILL, WARD & HENDERSON, P.A.
Suite 3700 - Barnett Plaza
101 East Kennedy Boulevard
Tampa, Florida 33602
Telephone: (813) 221-3900
Facsimile: (813) 221-2900
Attorneys for Plaintiff

Exhibit A

Oct-09-02 03:07P

P. 02

Midwestern Telecommunications Inc, P.O. Box 2049, Matteson, IL 60443

October 7, 2002

Phone Number: [REDACTED]

Dear [REDACTED]

YOUR TELEPHONE IS DUE TO BE DISCONNECTED ON OCTOBER 14, 2002. IN ORDER TO AVOID DISCONNECTION, PLEASE CALL: (800) 684-1816

Through an agreement with Vertex Broadband, Incorporated, (the dial tone provider for your local telephone service with Telecom Plus, Midwestern Telecommunications, Inc. (MTI) has been informed that your local telephone service will be disconnected on October 14, 2002. You should be aware that this disconnection will occur as a result of Telecom Plus defaulting on payments owed to the dial tone provider of your service. Because of the actions of Telecom Plus, you are in imminent danger of being disconnected. In order to retain your service you must complete the enclosed Letter of Authorization and return it to us with a payment of \$30.00 (this will cover the costs of transition and your entire first month of service). Alternatively, you may contact another carrier and switch to them before the above date or you may choose to stay with Telecom Plus (remember, this means that you will be disconnected on October 14). Whichever you choose, please be aware that you must take action by October 14, 2002 or your local service will be disconnected. When you are disconnected, please call MTI only if you wish to reestablish service with us.

The change of your service provider will not affect or disrupt your current service, and you will be able to keep your existing telephone number(s). Please note that MTI's prices are slightly lower than those of Telecom Plus. Furthermore, all new customers of MTI receive 30 minutes of FREE long distance upon switching.

The bottom line is that the service you currently receive can continue without interruption with MTI if you so choose. Please note the following points:

1. If you choose to stay with Telecom Plus, your service will be disconnected on October 14, 2002.
2. MTI will take over your local service only if you sign the enclosed Letter of Authorization and pay \$30.00.
3. The \$30.00 payment to MTI includes the cost of switching and your entire first month of service and you start out with a completely clean slate. This means that you will not have another payment due for approximately 30 days.
4. Starting next month, your basic monthly bill to MTI will be \$49.95 + tax. This does not include all of your current features.

MTI looks forward to serving your telecommunications service needs and we truly value your business. If we can be of further assistance, please do not hesitate to contact us at (800) 684-1816, or visit our web site at www.midwestertp.net.

Sincerely,

MTI

MTI

Exhibit B

LAW OFFICES OF
HILL, WARD & HENDERSON
PROFESSIONAL ASSOCIATION
3700 BANK OF AMERICA PLAZA
101 EAST KENNEDY BOULEVARD
TAMPA, FLORIDA 33602-5195

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WWW.HWHLAW.COM

Reply to: William C. Guerrant, Jr.
Direct Line: (813) 227-8488
E-mail address: wguerrant@hwlaw.com

October 8, 2002

VIA TELECOPIER

Midwestern Telecommunications, Inc.
5401 South Wentworth
Chicago, Illinois 60615

Re: TelCom Plus

Dear Sir or Madam:

This law firm represents TelCom Plus.


It has come to our attention that your company is engaged in illegal telemarketing of the TelCom Plus customer base. We have proof that you are engaged in false advertising, commercial disparagement, and actionable interference.

Demand is hereby made that you cease and desist immediately from these illegal and tortious acts. Failure to cease and desist now, and therefore mitigate the damages which you have caused, will only increase your ultimate liability.

Please govern yourself accordingly.

Very truly yours,

HILL, WARD & HENDERSON, P.A.


William C. Guerrant, Jr.

WCG/vat

cc: TelCom Plus