

**BEFORE
THE ILLINOIS COMMERCE COMMISSION**

Niatel, LLC)	
)	
Application for a certificate of Local and)	Docket No. 09-0509
Interexchange authority to operate as a)	
Reseller of telecommunications services)	
Throughout the state of Illinois)	

RESPONSE TO MOTION TO STRIKE FILED BY NIATEL, LLC

Pursuant to Section 200.190(e) of the Illinois Administrative Code, Transcend Multimedia, LLC (“Transcend”), by and through its undersigned attorneys, and together with the undersigned Illinois counsel, hereby files this Response to Niatel, LLC’s (“Niatel”) “Motion to Strike the Appearance and Petition to Intervene and Opposition filed by Transcend Multimedia, LLC” (“Motion to Strike”), and in support thereof states the following:

A. Transcend’s Appearance is Proper

Niatel’s Motion to Strike notes that Transcend’s attorney of record, Jonathan Marashlian, is not licensed to practice law in Illinois and asserts that Mr. Marashlian’s Appearance on behalf of Transcend should be stricken. However, an attorney licensed out of state can be authorized to practice before the Illinois Commerce Commission based on reciprocity. *See* 83 III. ADM. CODE 200.90(a). As set forth in Transcend’s recently filed Request for Leave to Appear, Mr. Marashlian is licensed in Maryland which permits reciprocity before its administrative agencies. Counselors and attorneys at law licensed in the State of Illinois are allowed to practice before the Maryland Public Service Commission, an equivalent body to this Commission, in matters of this type when an “attorney with a full-time office in [Maryland] is associated with him or her in the matter.” *See* Code



of Maryland Regulations, §20.07.01.04(B). Furthermore, Mr. Marashlian is associated with John Madden, a licensed attorney in Illinois practicing with O'Malley & Madden, P.C. Thus, Niatel's Motion to Strike Transcend's Appearance should be dismissed.

B. Niatel's Principals Should Not Profit from their own Malfeasance

Niatel's Motion to Strike notes that Transcend was involuntarily dissolved by the Illinois Secretary of State; however, the Motion to Strike ignores several critical facts. First, the involuntary dissolution was the direct and proximate result of non-compliance with the Management Agreement between Transcend and Niatel's related entity, Airdis, LLC ("Airdis"). The principals of Niatel (Michael Danis and Scott Sinclair) and Airdis failed to care for the day-to-day business of maintaining Transcend's good standing, the filing of necessary regulatory and legal paperwork, and the payment of associated fees. These failures led to the Illinois Secretary of State's dissolution of Transcend. The actions and omissions of Niatel's principals, agents, and related entity have grievously harmed Transcend; they should not be allowed to silence it as well.

Furthermore, since the termination of the Management Agreement between Transcend and Airdis, Patrick Hafner, one of Transcend's principals, through local counsel, has repeatedly sought to correct the actions and omissions of Mr. Danis, Mr. Sinclair, and Airdis by filing to reinstate Transcend with the Illinois Secretary of State. These efforts have been met with frustrations, but Transcend continues to seek reinstatement and anticipates that it will be able to do so in the near future.

Lastly, contemporaneously with this Motion, Transcend has filed a Motion for Leave to Amend its Petition to include Patrick Hafner and Jesse Alejos, the principals of Transcend, as individuals. Should the Commission grant this motion, it would render Niatel's argument completely moot. However, it should be emphasized that Niatel's reliance on the fruits of malfeasance by its principals, agents, and related entity to silence a legitimate objection to its

application for a certificate of authority reeks of bad faith and serves as further evidence that Niatel and its principals lack the requisite character to operate as a reseller of telecommunications services throughout the state of Illinois.

C. Transcend has standing to file its Petition

In its Motion to Strike, Niatel asserts that Transcend has no interest in the instant proceeding. While there is no question that Transcend is involved in litigation with Michael Danis and Scott Sinclair, the principals of Niatel, Transcend is fully aware that no order coming out of this proceeding will resolve that dispute. Transcend has filed in this proceeding to raise basic character issues regarding Niatel's qualifications to hold a Commission certificate in light of its principals' apparent motives — an issue of public interest. As detailed in its Petition, Transcend believes that Niatel's principals' intent in seeking certification in Illinois is solely to provide the principals and Airdis with a vessel to stow assets, thereby avoiding payment of a monetary judgment in the pending litigation with Transcend. Such conveyances of assets for the purpose of avoiding judgment is, in and of itself, the perpetration of further fraud in an attempt to avoid payment of a likely creditor. However, the issue is not whether Transcend's private interests would be served but rather that Transcend is acting on behalf of the public to express concerns to the Commission about whether issuing a license to Niatel would be in the public interest given the facts surrounding the creation of Niatel.

Furthermore, as noted above, contemporaneously with this Motion, Transcend has filed a Motion for Leave to Amend its Petition to include Patrick Hafner and Jesse Alejos, the principals of Transcend, as individuals. Should the Commission grant this motion, it would render Niatel's argument completely moot.

D. Niatel's Reliance on the Illinois Code of Civil Procedure is Misplaced

In its Motion to Strike, Niatel correctly notes that Section 200.200 of the Illinois Administrative Code, the Code Section regarding petitions to intervene before the Commission, does not impose any requirements on parties seeking to intervene before the Commission. Because the Administrative Code Section governing this proceeding does not impose any requirements on parties seeking to intervene, Niatel's Motion to Strike attempts to import additional requirements from the Illinois Code of Civil Procedure.

This attempt is misplaced and should be rejected by the Commission. The vast majority of matters governed by the Illinois Code of Civil Procedure involve two or more parties involved in a civil dispute before an adjudicative body. The instant proceeding involves a private party petitioning an administrative agency for authority to operate as a reseller of telecommunications services throughout the state of Illinois, which involves completely different considerations. Unlike an adjudicative body balancing the rights of the various private parties before it, the Commission's primary concern in the instant proceeding is whether issuing a license to Niatel would be in the public interest. The importation of statutory restrictions generally applied to proceedings where the public interest is not the primary concern is inappropriate and should not be allowed to prevent parties such as Transcend from acting on behalf of the public to bring relevant information to the Commission's attention regarding applications for authority to resell telecommunications services throughout this state.

E. Transcend's Petition Contains Information Relevant and Material to the Instant Proceeding

Niatel's Motion to Strike argues that Transcend's Petition "presents no evidence of any relevance to Niatel's Application," because it only contains information from "an ongoing lawsuit[], Niatel's website, and regulatory filings in other jurisdictions [Emphasis added]."

Transcend's Petition brings to the Commission's attention inconsistencies between the information contained in Niatel's application in the instant proceeding and the information available from a public proceeding in Cook County Circuit Court, Niatel's website, and regulatory filings in other jurisdictions. Transcend assumes that Niatel would prefer that the Commission remain blissfully unaware of its own inconsistent statements and actions. But the argument that they are somehow "irrelevant, immaterial, or scurrilous" with regards to this proceeding is absurd on its face and should be ignored by the Commission.

Furthermore, it must be emphasized once again that the Commission's primary concern in this proceeding is whether issuing a license to Niatel would be in the public interest. As an intervener, Transcend is not seeking to prosecute a private claim but rather to raise concerns about whether Mr. Danis and Niatel possess the basic qualifications for a license. As evidenced in Transcend's Petition, they clearly do not.

At a minimum, the Commission should refrain from approving the Niatel's application for a license pending the outcome of the ongoing litigation in Cook County or by taking further evidence in the context of the licensing proceeding — evidence which Transcend volunteers to proffer. There is no urgency to issue a license for Niatel, because Niatel is the alter ego of an existing, operational and by all appearances profitable company, Airdis, which is already licensed by the Commission. Niatel does not deny any of the allegations set forth in the intervention. It does not deny that Niatel is the alter ego of Airdis. There is no rush to grant Niatel a license that would be duplicative and superfluous; a license which could be used by Niatel to engage in the transfer of assets from Airdis. Without the license, Niatel cannot engage in such an unlawful transfer. Niatel's principals can continue to engage in reselling telecommunications services in Illinois through Airdis until the ongoing litigation is resolved. There simply is no hurry to issue a license to Niatel.

WHEREFORE, for the foregoing reasons, Transcend prays that the Commission deny Niatel's Motion to Strike filed in the above docket.

Respectfully submitted,

Helein & Marashlian, LLC
The CommLaw Group
1420 Spring Hill Road
Suite 205
McLean, VA 22101

Attorneys for Transcend Multimedia, LLC

By: /s/ Jonathan S. Marashlian
Jonathan S. Marashlian
Member of Maryland State Bar
e-mail: jsm@commlawgroup.com

John P. Madden
O'Malley & Madden, P.C.
542 S. Dearborn St., Ste. 660
Chicago, Illinois 60605

