

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTINE ZILCH,

Plaintiff,

-against-

ALASKA COMMUNICATIONS SYSTEMS
GROUP INC., WILLIAM H. BISHOP,
DAVID W. KARP, PETER D. AQUINO,
WAYNE BARR JR., BENJAMIN C.
DUSTER IV, and SHELLY LOMBARD,

Defendants.

Case No.: _____

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff, Christine Zilch (“Plaintiff”), by her undersigned attorneys, for this complaint against Defendants, alleges upon personal knowledge with respect to Plaintiff, and upon information and belief based upon, *inter alia*, the investigation of counsel, as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This is an action brought by Plaintiff against Alaska Communications Systems Group, Inc. (“Alaska Communications” or the “Company”) and the members of the Company’s board of directors (collectively referred to as the “Board” or the “Individual Defendants” and, together with Alaska Communications, the “Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a) respectively, and United States Securities and Exchange Commission (“SEC”) Rule 14a-9, 17 C.F.R. § 240.14a-9. Plaintiff’s claims arise in connection with the proposed acquisition of Alaska Communications by affiliates of ATN International, Inc. (“ATN”) and Freedom 3 Capital LLC (“Freedom 3” and together with ATN, the “Buyers”).

2. On November 3, 2020, Alaska Communications, Macquarie Capital and GCM Grosvenor (together, “Macquarie”) announced that they had entered into an agreement and plan of merger, pursuant to which Alaska Communications would merge with and into Macquarie. Pursuant to the terms of the original Merger Agreement, Alaska Communications’ shareholders would be entitled to receive \$3.00 per share in cash.

3. On January 4, 2021, Alaska Communications and the Buyers announced that they had agreed upon an alternative transaction (the “Proposed Transaction”), pursuant to which Alaska Communications would terminate the merger agreement with Macquarie and GCM Grosvenor in favor of an agreement and plan of merger with the Buyers, pursuant to which Alaska Communications would merge with and into the Buyers (the (“Merger Agreement”) and Alaska Communications’ shareholders would be entitled to receive \$3.40 per share in cash (the “Merger Consideration”).

4. On January 25, 2021, in order to convince Alaska Communications’ public common stockholders to vote in favor of the merger with the Buyers, the Defendants authorized the filing of a second materially incomplete and misleading Schedule 14(a) Preliminary Proxy Statement (the “Proxy”) with the SEC.

5. In particular, the Proxy contains materially incomplete and misleading information concerning the background of the Proposed Transaction and the valuation analyses performed by Alaska Communications’ financial advisors, B. Riley Securities, Inc. (“B. Riley” or the “Financial Advisors”) regarding the Proposed Transaction.

6. The Proposed Transaction is expected to close in the second half of 2021 and the special meeting of the Company’s shareholders to vote on the Proposed Transaction will be scheduled in the coming weeks. Therefore, it is imperative that the material information that has

been omitted from the Proxy is disclosed prior to the special meeting, so Plaintiff can properly exercise her corporate voting rights.

7. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against Defendants for violations of Sections 14(a) and 20(a) of the Exchange Act and Rule 14a-9. Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction unless and until the material information discussed below is disclosed to Alaska Communications' public common shareholders sufficiently in advance of the upcoming shareholder vote or, in the event the Proposed Transaction is consummated, to recover damages resulting from the Defendants' violations of the Exchange Act.

JURISDICTION AND VENUE

8. This Court has jurisdiction over all claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the 1934 Act and Rule 14a-9.

9. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over each Defendant by this Court permissible under the traditional notions of fair play and substantial justice. "Where a federal statute such as Section 27 of the [Exchange] Act confers nationwide service of process, the question becomes whether the party has sufficient contacts with the United States, not any particular state." *Sec. Inv'r Prot. Corp. v. Vigman*, 764 F.2d 1309, 1315 (9th Cir. 1985). "[S]o long as a defendant has minimum contacts with the United States, Section 27 of the Act confers personal jurisdiction over the defendant in any federal district court." *Id.* at 1316.

10. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as 28 U.S.C. § 1391, because Defendants are found or are inhabitants or transact business in this District. Indeed, the Company's common stock trades on the NASDAQ Composite exchange (the "Nasdaq"), which is headquartered in this District rendering venue in this District appropriate. *See, e.g., United States v. Svoboda*, 347 F.3d 471, 484 n.13 (2d Cir. 2003) (collecting cases).

PARTIES

11. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of Alaska Communications common stock.

12. Defendant Alaska Communications is a Delaware corporation with its principal executive offices located at 600 Telephone Avenue, Anchorage, Alaska. The Company is a telecommunications fiber, broadband, and managed IT services provider, offering technology and customer solutions to residential, business, and wholesale customers in and out of Alaska. The Company's common stock trades on the Nasdaq under the ticker symbol "ALSK".

13. Defendant William H. Bishop ("Bishop") is, and has been at all relevant times, the Company's President and Chief Executive Officer, and a director of the Company.

14. Defendant David W. Karp ("Karp") is, and has been at all relevant times, the Chair of the Company's Board of Directors.

15. Defendant Peter D. Aquino ("Aquino") is, and has been at all relevant times, a director of the Company.

16. Defendant Wayne Barr, Jr. ("Barr") is, and has been at all relevant times, a director of the Company.

17. Defendant Benjamin C. Duster, IV ("Duster") is, and has been at all relevant times,

a director of the Company.

18. Defendant Shelly Lombard (“Lombard”) is, and has been at all relevant times, a director of the Company.

19. The Defendants identified in paragraphs 14 through 18 are collectively referred to herein as the “Board” or the “Individual Defendants,” and together with the Company, the “Defendants.”

SUBSTANTIVE ALLEGATIONS

I. Background of the Company and the Proposed Transaction

20. Alaska Communications is a publicly traded Delaware corporation that provides telecommunications fiber, broadband, and managed IT services, offering technology and customer solutions to residential, business, and wholesale customers in and out of Alaska, and provides telecommunication services to consumers in the most populated communities throughout the state. The Company’s common stock trades on the Nasdaq under the ticker symbol “ALSK.”

21. The Company’s facilities-based communications network extends through the economically significant portions of Alaska and connects to the contiguous states via Alaska Communications’ two diverse undersea fiber optic cable systems. Its network is among the most expansive in Alaska and forms the foundation of service to its customers. Alaska Communications operates in a largely two-player terrestrial wireline market.

22. Prior to the announcement of the Proposed Transaction, Alaska Communications had excellent growth prospects. Although Alaska Communications estimates its market share to be less than 25% statewide, its revenue performance relative to its largest competitor suggests that Alaska Communications is gaining market share in the markets that it serves, with third-party market studies indicating that Alaska Communications’ market share close to 40% for “near net”

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.