

Mar 25 02 04:03p D. Richard McDaniel

Stipulated Exhibit No. 1

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DECLASSIFIED
CONFIDENTIAL

SETTLEMENT AND RELEASE AGREEMENT

This Confidential Settlement and Release Agreement (hereinafter "Settlement Agreement") is made and entered into this 22nd day of March, 2002, by and between ALEC, Inc. d/b/a Metrolink (hereinafter "ALEC"), a subsidiary of Duro Communications Corp., and Sprint-Florida, Inc. (hereinafter "Sprint"), a corporation with its principal place of business located at 6480 Sprint Parkway, Overland Park, KS 66251. Sprint and ALEC are referred to collectively herein as the "Parties."

RECITALS

WHEREAS, on February 5, 2002 ALEC filed a Complaint against Sprint with the Florida Public Service Commission, Docket No. 020099-TP, seeking to enforce an Interconnection Agreement between the parties.

WHEREAS, the Parties' Interconnection Agreement provides for a methodology whereby the Party sending local traffic compensates the other Party for transport and termination of such local traffic ("Intercarrier Compensation").

WHEREAS, such Intercarrier Compensation includes charges for transport from an established point of interconnection ("POI"), or from Sprint's designated POI, to ALEC's switch, including cost of installation and monthly rental of facilities used to provision such transport (the "transport element") and also separate Minutes of Use charges for ALEC's termination of such traffic from its switch to the premises of end users (the "termination element").

WHEREAS, Count II of this Complaint specifically alleged that Sprint had breached the Interconnection Agreement by refusing to pay ALEC the termination element for the months of November and December, 2001, for ISP-bound traffic originated by Sprint and terminated by ALEC.

WHEREAS, on March 4, 2002 Sprint filed a Motion to Dismiss Count II of the Complaint on the grounds that the Florida PSC does not have jurisdiction over ISP-bound traffic and has no authority to resolve a dispute relating to compensation for this traffic.

WHEREAS, Sprint also alleged in billings and communications to ALEC that it had overpaid ALEC for termination element charges in 2001 in the amount of \$427,574.62 due to the application of the First Quarter 2001 Minutes of Use Growth Cap, as spelled out in the FCC's ISP Remand Order¹, and further that Sprint had made demand upon ALEC for reimbursement of these overpayments.

WHEREAS, the Parties have had an ongoing dispute as to which quarter shall be used for setting the base line in determining the Growth Cap for ISP-bound Minutes of Use once Sprint elects to opt-into the FCC compensation mechanism contained in the ISP Remand Order.

¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, FCC 01-131 (released April 27, 2001) ("ISP Remand Order").

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FPSC-COMMISSION CLERK

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 020099-TP EXHIBIT NO. 7
COMPANY/ WITNESS: ALEC, Inc.
DATE: 8-7-02

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WHEREAS, the Parties desire to resolve and settle the termination element matter contained in Count II of the ALEC Complaint, and to resolve the dispute concerning applicability of the FCC Growth Cap and the base line quarter for applying the growth cap for ISP-bound Minutes of Use, and yet continue to litigate before the Florida PSC the matters contained in Counts I and III of the Complaint.

NOW THEREFORE, in consideration of the foregoing, the mutual covenants, conditions and promises contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by each party to the other, Sprint and ALEC, each intending to be legally bound hereby, covenant and agree as follows:

1. Sprint agrees to pay ALEC in full the below-stated amounts for the termination element in Florida for the months of November and December, 2001, and January, 2002, which amounts Sprint has disputed and not paid. The amounts Sprint agrees to pay to ALEC are as follows: [REDACTED] for November, 2001; [REDACTED] for December, 2001; and [REDACTED] for January, 2002. These payments shall be made by check or wire transfer to ALEC within 10 calendar days after execution of this Settlement Agreement.
2. Sprint agrees to drop its claim that it overpaid ALEC in the amount of [REDACTED] in termination element payments in 2001 due to application of the Minutes of Use Growth Cap, and to drop its claim for reimbursement of this amount.
3. The Parties agree that going forward from February 1, 2002, which is the date Sprint opted into the FCC's ISP Remand Order in Florida, the Minutes of Use Growth Cap for ISP-bound traffic originated by Sprint and terminated by ALEC, which is used in computation of the termination element will be determined by looking at the baseline Minutes of Use terminated by ALEC in the First Quarter, 2001.
4. ALEC agrees to dismiss with prejudice Count II (termination element) of its Complaint now pending before the Florida PSC, and to file all necessary papers with the PSC to effectuate this dismissal.
5. The Parties agree that in the event there is a change in the law concerning the ISP Remand Order as a result of the appeals now pending before the U.S. Circuit Court of Appeals for the D.C. Circuit, the Parties will take steps to implement that change in the law once it becomes final. If the ISP Remand Order is stayed, reversed, vacated or remanded, then until any such stay is lifted, or the Order is reinstated, affirmed or reissued, the above Paragraph 3 shall be struck from this Settlement Agreement and, instead, the current Interconnection Agreement, as constituted immediately prior to the signing of this Settlement Agreement, shall continue in full force and effect, including all provisions regarding Intercarrier Compensation. The Parties further acknowledge that the U.S. Circuit Court of Appeals for the D.C. Circuit or another court of competent jurisdiction, the FCC or any of its bureaus or offices pursuant to delegated authority, or the Florida Public Service Commission at the direction or discretion of the FCC or any of its bureaus or offices pursuant to delegated authority otherwise may issue an order that relates to the rate or calculation of the termination element settled herein. In the event that such order is final, materially impacts the termination element rate settled herein relative to the termination element rate contained in the Interconnection Agreement and only in the event that such order expressly directs carriers to flow through on a retroactive basis such material changes in the rate or calculation of the termination element settled herein, each Party agrees that for the

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months beginning with the February 2002 invoice rendered by a Party (that reflects January 2002 usage) through and including the month in which such order is released, it shall pay the other Party any and all amounts owed employing such new rate or calculation of the termination element. The Parties further agree to engage in good faith negotiations to amend the Interconnection Agreement or any successor agreement to reflect such order's change to the rate or calculation of the termination element setled herein, said amendment once finalized to relate back to the release date of such order.

RELEASE

6. Each Party, on behalf of itself, its predecessors, successors, assigns, parent company, affiliates, subsidiaries, directors, officers, employees and agents, agrees to release and forever discharge the other from every action, charge, obligation, costs, expenses, claims, rights, liability or demand of any kind, with regard to the disputes and matters specified in this Settlement Agreement.

CONFIDENTIALITY

7. A. The Parties further agree that neither of them will disclose the contents of this Settlement Agreement or any details pertaining to its negotiation or terms, unless such disclosure is: (i) lawfully required by any court or governmental agency; (ii) otherwise required to be disclosed by law; or (iii) necessary in any legal proceeding in order to enforce any provision of this Settlement Agreement. The Parties agree that they will notify each other in writing within five (5) calendar days of the receipt of any subpoena, court order, or administrative order requiring disclosure of information subject to this non-disclosure provision. Any notices required under this paragraph shall be served upon the Parties via telecopier and overnight priority mail as follows:

For ALEC:

For Sprint:

Mr. Philip V. Patete
Chief Technical Officer
ALEC, Inc.
1211 Semoran Blvd., Suite 295
Casselberry, FL 32707
Telephone No. (407) 673-8500
Telecopier No. (407) 673-8552

Mr. William E. Cheek
President Wholesale Markets
Sprint
6480 Sprint Parkway
Mailstop: KSOPHM0310-3A453
Overland Park, KS 66251
Telephone No. (913) 315-7839
Telecopier No. (913) 315-0628

B. In the event a party breaches the terms of this confidentiality provision, then any reasonable expenses, including reasonable attorneys' fees, court costs and travel incurred by a party in the successful enforcement of this provision, whether through litigation or other action necessary to compel compliance, shall be borne by the breaching party. Any such costs incurred by a party in the successful defense of any action for enforcement of this provision shall be borne by the party seeking enforcement for alleged non-compliance.

OTHER TERMS AND CONDITIONS

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8. The Parties agree to bear their own attorneys' fees and costs associated with this Settlement Agreement.

9. This Settlement Agreement may be signed in counterparts and is effective as the date execution by the Parties is completed.

WITNESS the following signatures on the dates set forth.

SPRINT-FLORIDA, INC.

By:

William E. Cheek
Signature

Name: William E. Cheek

Title: President Wholesale Markets

Date: March 22, 2002

ALEC, INC.

By:

Philip V. Patete
Signature

Name: Philip V. Patete

Title: Chief Technical Officer

Date: March 22, 2002