

ORIGINAL

UNITED STATES BANKRUPTCY COURT FOR  
THE EASTERN DISTRICT OF LOUISIANA  
(NEW ORLEANS)

In re: )  
)  
ACTEL INTEGRATED ) Case No. 01-12901 (TMB)  
COMMUNICATIONS, INC., ) Section "A"  
) Chapter 7  
Debtor. )

**NOTICE OF MOTION FOR APPROVAL OF  
SETTLEMENT OF CONTROVERSY AMONG INTERSTATE FIBERNET, INC.,  
ITC^DELTACOM COMMUNICATIONS, INC. AND THE CHAPTER 7 TRUSTEE**

TO: Office of the United States Trustee  
400 Poydras Street  
Suite 2110  
New Orleans, LA 70130

All parties on the 2002 service list

Dwayne P. Smith, the Chapter 7 Trustee, has filed a Motion for Approval of Settlement of Controversy Among Interstate FiberNet, Inc. ("Interstate"), ITC^DeltaCom Communications, Inc. ("ITC") and the Chapter 7 Trustee (the "Motion"). Pursuant to the Motion, the Chapter 7 Trustee seeks approval of a Settlement Agreement that, among other things, provides for the allowance of Interstate's Chapter 11 Administrative Claim, ITC's Chapter 11 Administrative Claim, Interstate's Pre-petition Claim, and ITC's Pre-petition Claim.

You are required to file a response to the attached motion on or before **March 11, 2003**  
**no later than 4:00 p.m.**

At the same time, you must also serve a copy of the response upon the following  
attorneys:

Alicia M. Bendana (21472)  
Lowe, Stein, Hoffman, Allweiss & Hauver, L.L.P.  
One Shell Square, Suite 3600  
701 Poydras Street  
New Orleans, LA 70139  
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HEARING ON THE MOTION WILL BE HELD ON **March 18, 2003 at 10:00 a.m.**

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE.

Date: February 7, 2003

BY: s/Alicia M. Bendana  
Alicia M. Bendana (21472)  
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Attorneys for Dwayne P. Smith,  
Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT FOR  
THE EASTERN DISTRICT OF LOUISIANA  
(NEW ORLEANS)

In re:	)	
	)	
ACTEL INTEGRATED	)	Case No. 01-12901 (TMB)
COMMUNICATIONS, INC.,	)	Section "A"
	)	Chapter 7
Debtor.	)	

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**MOTION FOR APPROVAL OF SETTLEMENT OF CONTROVERSY  
AMONG INTERSTATE FIBERNET, INC., ITC^DELTACOM  
COMMUNICATIONS, INC. AND THE CHAPTER 7 TRUSTEE**

Dwayne P. Smith, Chapter 7 Trustee, through his undersigned counsel, hereby moves for approval of a settlement that has been reached by and among Interstate FiberNet, Inc. ("Interstate"), ITC^DeltaCom Communications, Inc. ("ITC"), and the Chapter 7 Trustee (the "Trustee") in connection with certain claims and other related matters with respect to Interstate and ITC, and as grounds therefore, states as follows:

**BACKGROUND**

1. Interstate operates a fiber optic network that spans approximately 9,840 miles in ten states and connects over 120 points of presence ("POPs"). By allowing customers access to its fiber optic network, Interstate is able to provide to its customers fiber optic transmission capacity and other ancillary services. Because of the types of services involved, Interstate dedicates certain circuits and network space to each customer.

2. ITC bundles local and long distance telephone services (the "Telephone Services") and provides the Telephone Services to its subscribers ("ITC Subscribers"). Various state utility commissions and the Federal Communications Commission regulate the Telephone Services. In providing the Telephone Services to ITC Subscribers, ITC must provide the subscribers of other

local and long distance telephone service providers the ability to connect and communicate with  
ITC Subscribers.

3. Prior to filing its petition for relief herein, Actel Integrated Communications, Inc. ("Actel") was a privately owned facilities-based competitive local exchange carrier ("CLEC") providing switched local exchange, long distance, data services and integrated telecommunications solutions to business customers throughout the southern United States, including Alabama, Mississippi, Louisiana, Texas and Florida.

4. In the context of a master capacity lease (the "Lease"), beginning in May 1999 through December 2000, Interstate and Actel entered into approximately nineteen (19) agreements in the form of service orders (together with any and all amendments, modifications and restatements, the "Service Orders") pursuant to which Interstate provided to Actel certain non-switched fiber optic transmission capacity, circuit access and other ancillary services (collectively, the "Services") between various POPs. Access to Interstate's fiber optic network was used by Actel in combination with other services for the purpose of providing telecommunications services to Actel's customers.

5. ITC provided Actel and Actel's subscribers (the "Actel Subscribers") with the ability to connect and communicate with ITC Subscribers (the "Interconnection Services"). Tariffs govern the pricing for the provision of the Interconnection Services. Each tariff establishes the terms, conditions, and pricing under which ITC provided access to its network to enable Actel to deliver telecommunications traffic to ITC and receive traffic from ITC. For example, to the extent that an Actel Subscriber originates a call that was brought to its destination by ITC, ITC bills Actel on a minute of use basis. Therefore, certain charges are automatically incurred by ITC each time an Actel Subscriber dials and connects with an ITC Subscriber, and each time an

ITC local service subscriber subscribed for long distance service from Actel (collectively, the "Interconnection Charges").

6. Prior to the filing of the petition for relief by Actel, Interstate provided the Services to Actel in accordance with the terms of the Service Orders and Lease. In addition, ITC provided the Interconnection Services to Actel, thereby incurring Interconnection Charges. As of the date of the filing of the petition for relief herein, Actel defaulted in payment of amounts owed to Interstate on account of the Services and amounts owed to ITC on account of the Interconnection Services.

7. On April 11, 2001 (the "Petition Date"), Actel filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

8. Subsequent to the Petition Date, Interstate continued to provide the Services in accordance with the terms of the Service Orders and Lease, and ITC continued to provide the Interconnection Services as required by law.

9. On June 14, 2001 (the "Conversion Date"), this Court entered an order converting the case to chapter 7. Dwayne Smith was appointed as the Trustee.

10. On December 28, 2001, Interstate filed a proof of claim in the amount of \$41,754.15 for the Services performed pre-petition under the Lease and Service Orders ("Interstate's Pre-petition Claim"). In addition, ITC filed a proof of claim in the amount of \$9,517.85 for the Interconnection Services performed pre-petition under certain tariffs ("ITC's Pre-petition Claim").

11. On November 26, 2002, Interstate and ITC filed their Motion for Allowance and Immediate Payment of Administrative Expense Claims (the "Motion"). Pursuant to the Motion, Interstate

and ITC sought an order from this Court allowing and directing payment of certain Chapter 11 and Chapter 7 administrative expense claims.

### **JURISDICTION**

12. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **REQUEST FOR RELIEF**

13. While preparing for oral argument on the Motion, the Trustee, Interstate, and ITC entered into extensive settlement negotiations. The parties' discussions were successful and the parties have agreed, subject to approval by this Court, to settle their disputes connected with the Motion.

14. The terms and conditions of the settlement (the "Settlement") are set forth in a written settlement agreement (the "Settlement Agreement"), a copy of which is attached to the Motion as Exhibit A. Among other things, the Settlement provides for the allowance of Interstate's Chapter 11 Administrative Claim, ITC's Chapter 11 Administrative Claim, Interstate's Pre-petition Claim, and ITC's Pre-petition Claim.

15. "[T]he benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate." *In re Energy Coop.*, 886 F.2d 921, 927 (7<sup>th</sup> Cir. 1989).

16. The process of approving the settlement of a claim "requires a bankruptcy judge to assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromised proposal." *In re Martin*, 91 F.3d 389, 394 (3<sup>rd</sup> Cir. 1996). The federal courts recognize four criteria that a bankruptcy court should consider in

striking this balance:

- (1) the probability of success in litigation;
- (2) the likely difficulties in collection;
- (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- (4) the paramount interest of the creditors.

*Id.*

17. In applying the above factors to this case, the Settlement Agreement clearly should be approved. As to the first factor, the probability of success in the litigation for either side is unpredictable. Factor two is irrelevant in this case as the Trustee does not stand to receive payment. Factor three is quite relevant as to the complexity of the litigation regarding the issue of the allowance of the chapter 7 administrative expense claims. Not only is the law ambiguous on this issue, but both parties are capable of presenting conflicting evidence. The final factor is perhaps the most persuasive in this case. The expense to the Trustee in litigation costs and the uncertainty of successfully defending against the allowance and payment of the chapter 7 administrative claims would clearly have a detrimental effect upon the creditors.

18. The proposed Settlement avoids the costs, expenses, and uncertainties of further litigation. Absent the settlement, the Trustee, Interstate, and ITC would have the further effort, expense, and uncertainty associated with litigating the Motion.

19. The Trustee, after considering the facts and circumstances of Interstate and ITC's Chapter 11 and Chapter 7 Administrative Expense Claims and the potential defenses thereto, believe that, in the exercise of his judgment, the Settlement constitutes a good faith settlement of the Motion and is in the best interests of the Trustee, the creditors and the bankruptcy estate.

WHEREFORE, for the foregoing reasons, the Trustee respectfully request the following relief:

- A. That the Settlement Agreement attached to the Motion as Exhibit A and the underlying Settlement as set forth in that agreement be approved; and
- B. That the Trustee and Actel's bankruptcy estate be authorized and directed to take any and all appropriate actions to consummate the terms of the Settlement.

Dated: February 7, 2003

s/Alicia M. Bendana

Alicia M. Bendana (21472)  
Of counsel, Lowe, Stein, Hoffman,  
Allweiss & Hauver, L.L.P.  
One Shell Square, Suite 3600  
701 Poydras Street  
New Orleans, LA 70139  
Tel: (504) 581-2450

Attorneys for Dwayne P. Smith,  
Chapter 7 Trustee



## SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of January 30, 2003, is among Interstate FiberNet, Inc. ("Interstate"), ITC^DeltaCom Communications, Inc. ("ITC"), and Dwayne P. Smith, the Chapter 7 Trustee (the "Trustee") (collectively, the "Parties") of the Actel Integrated Communications, Inc. bankruptcy estate.

### Recitals

WHEREAS, on April 11, 2001 (the "Petition Date") Actel Integrated Communications, Inc. (the "Debtor") filed a voluntary petition in this Court for relief under chapter 11 (the "Chapter 11 Case") of title 11 of the United States Code (the "Bankruptcy Code"); and

WHEREAS, on June 14, 2001, this Court entered an order converting the Chapter 11 Case to one under chapter 7 (the "Chapter 7 Case") of the Bankruptcy Code; and

WHEREAS, Dwayne P. Smith was appointed as the Trustee; and

WHEREAS, on or about November 26, 2002, Interstate FiberNet, Inc. ("Interstate") and ITC^DeltaCom Communications, Inc. ("ITC") (collectively, the "Claimants") filed a motion (the "Motion") for allowance and payment of administrative expense claims in the amount of \$76,438.73 (the "Interstate Chapter 11 Claim"), \$12,808.71 (the "ITC Chapter 11 Claim"), \$30,563.92 (the "Interstate Chapter 7 Claim"), and \$13,377.20 (the "ITC Chapter 7 Claim") (collectively, the "Administrative Claims") for postpetition services; and



WHEREAS, on December 28, 2001, Interstate filed a proof of claim in the amount of \$41,754.15 (the "Interstate Prepetition Claim"), seeking payment as an unsecured non-priority creditor for prepetition services rendered to the Debtor; and

WHEREAS, on December 28, 2001, ITC filed a proof of claim in the amount \$9,517.85 (the "ITC Prepetition Claim"), seeking payment as an unsecured non-priority creditor for prepetition services rendered to the Debtor; and

WHEREAS, the Parties hereby acknowledge and agree that the intent and purpose of this Settlement Agreement is to resolve and settle all outstanding issues among the Parties and that each of the transactions contemplated by this Settlement Agreement are integral parts of this Settlement Agreement, without which the Parties would not have entered into this Settlement Agreement; and

WHEREAS, following good faith, arms' length negotiations, the Parties have agreed to resolve the Motion upon the terms and conditions hereinafter set forth.

### **Terms of Agreement**

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants contained in this Settlement Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. The Interstate Chapter 11 Claim is allowed without offset, defense or counterclaim as an administrative expense claim pursuant to section

503(b)(1)(A) of the Bankruptcy Code in the amount of \$76,438.73 and entitled to section 507(a)(1) priority in distribution.

2. The ITC Chapter 11 Claim is allowed without offset, defense or counterclaim as an administrative claim pursuant to section 503(b)(1)(A) of the Bankruptcy Code in the amount of \$12,808.71 and entitled to section 507(a)(1) priority in distribution.

3. Interstate and ITC hereby withdraw the Interstate Chapter 7 Claim and the ITC Chapter 7 Claim in their entirety.

4. The Interstate Prepetition Claim is allowed without offset, defense or counterclaim as a general unsecured non-priority claim in the amount of \$41,754.15, and entitled to distribution in accord with section 726(a)(2) of the Bankruptcy Code.

5. The ITC Prepetition Claim is allowed without offset, defense or counterclaim as a general unsecured non-priority claim in the amount of \$9,517.85, and entitled to distribution in accord with section 726(a)(2) of the Bankruptcy Code.

6. Except as expressly provided herein, the Trustee, on behalf of the Debtor and together with his predecessors, successors, assigns and representatives hereby releases and forever discharges the Claimants, and their past and present parents, subsidiaries, affiliates, partnerships, agents, and divisions, and their respective officers, directors, employees, partners, agents, predecessors, successors, assigns and representatives, from any and all claims, including any and all avoidance actions under the Bankruptcy Code, demands,

complaints, suits, causes or rights of action, contentions, judgments, protests, obligations, debts, agreements, covenants, liens, damages, expenses, losses and liabilities, of whatsoever kind or nature, whether accrued or unaccrued, whether asserted or unasserted, whether known or unknown, whether for direct liability or for contribution or indemnity, whether or not it is made a part of any judicial or administrative proceeding, which the Trustee or Debtor ever had or now has, from the beginning of time to the date of this Settlement Agreement relating or arising out of the Lease, the Service Orders and any applicable tariffs, except such rights and obligations as are contained herein and created by this Settlement Agreement.

7. Except as expressly provided herein, the Claimants, together with their predecessors, successors, assigns and representatives hereby release and forever discharge the Trustee, and his predecessors, successors, assigns and representatives, from any and all claims, demands, complaints, suits, causes or rights of action, contentions, judgments, protests, obligations, debts, agreements, covenants, liens, damages, expenses, losses and liabilities, of whatsoever kind or nature, whether accrued or unaccrued, whether asserted or unasserted, whether known or unknown, whether for direct liability or for contribution or indemnity, whether or not it is made a part of any judicial or administrative proceeding, which the Claimants ever had or now have, from the beginning of time to the date of this Settlement Agreement relating or arising out of the Lease, the Service Orders and any applicable tariffs, except such rights and obligations as are contained herein and created by this Settlement Agreement.

8. Interstate and ITC are hereby authorized to discontinue any and all services provided to the Debtor and/or the Trustee under the Lease, the Service Orders and any applicable tariffs and may take any steps necessary thereto, including but not limited to placing a block on the Debtor's carrier identification code, without further order of this Court.

9. This Settlement Agreement shall only become effective and binding upon the Parties hereto upon the approval of this Settlement Agreement by the Court. In the event that the Court does not approve this Settlement Agreement, (a) this Settlement Agreement shall not have any force or effect; and (b) nothing contained herein shall be deemed to be an admission or concession of, or be in any way binding upon, any party hereto in connection with any future litigation over the matters referenced herein, including but not limited to the Motion, the Interstate Prepetition Claim, and the ITC Prepetition Claim.

10. No alterations, modifications, supplements, changes, amendments, waivers, or termination of this Settlement Agreement shall be valid unless in writing and executed by all of the parties hereto and approved by the Court. No waiver of any of the provisions of this Settlement Agreement shall constitute a waiver of any other provisions (whether or not similar).

11. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana, without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction.

12. It is expressly understood and agreed that there have not been any promises, agreements, warranties, representations, or inducements, whether oral or written, express or implied, made by any party hereto, except to the extent expressly set forth herein.

13. This Settlement Agreement shall be binding upon and inure to the benefit of the parties hereto, their parents, subsidiaries and affiliated corporations, their predecessors, their successors and assigns (including any third party purchaser) and each of their agents, representatives, predecessors, and successors and assigns, including but not limited to the Debtor, the Debtor's bankruptcy estate, any subsequently appointed Chapter 7 Trustee or Examiner, and further including any other trustee or statutory committee heretofore or hereafter appointed in this case.

14. This Settlement Agreement contains the entire agreement of the parties hereto, and supersedes all prior and contemporaneous discussions, negotiations, understandings, and agreements, whether oral or written, express or implied, between and among the parties hereto regarding the subject matter of this Settlement Agreement.

15. Each party hereby expressly represents and warrants that the individual executing this Settlement Agreement on its behalf is fully authorized by such party to execute this Settlement Agreement and to bind such party.

16. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken

together shall constitute one and the same instrument.

17. The Court shall retain jurisdiction to hear any matters or disputes arising from or relating to the Settlement Agreement.

Interstate FiberNet, Inc.

By: Mr. Frederick

Title: \_\_\_\_\_  
Vice President and Treasurer

ITC^DeltaCom Communications, Inc.

By: Mr. Frederick

Title: \_\_\_\_\_  
Vice President and Treasurer

Chapter 7 Trustee on behalf of  
Actel Intergrated Communications, Inc.

By: Mr. South

Title: Trustee  
Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT FOR  
THE EASTERN DISTRICT OF LOUISIANA  
(NEW ORLEANS)

In re:	)	
	)	
ACTEL INTEGRATED	)	Case No. 01-12901 (TMB)
COMMUNICATIONS, INC.,	)	Section "A"
	)	Chapter 7
Debtor.	)	

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**ORDER APPROVING SETTLEMENT OF CONTROVERSY  
AMONG INTERSTATE FIBERNET, INC., ITC^DELTACOM  
COMMUNICATIONS, INC. AND THE CHAPTER 7 TRUSTEE**

Upon consideration of the Motion for Approval of Settlement of Controversy Among Interstate FiberNet, Inc., ITC^DeltaCom Communications, Inc. and the Chapter 7 Trustee (the "Motion") that has been filed by the Chapter 7 Trustee (the "Trustee"), and any opposition/response filed thereto; with due and proper notice of the Motion having been duly given and no other or further notice being required, and it appearing that the relief requested in the Motion is in the best interests of the Trustee, the creditors, and the bankruptcy estate and it further appearing that the proposed Settlement Agreement attached to the Motion as Exhibit A (the "Settlement Agreement") and the underlying settlement set forth in the Settlement Agreement (the "Settlement") represent a good faith settlement, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by the United States Bankruptcy Court for the District of Louisiana, hereby ORDERED:

1. that the Motion is GRANTED; and
2. that the terms of the Settlement Agreement attached to the Motion as Exhibit A and the underlying Settlement set forth in the Settlement Agreement are APPROVED;



3. that the Trustee is authorized and directed to enter into the Settlement Agreement which is attached to the Motion as Exhibit A and the underlying Settlement set forth in the Settlement Agreement; and
4. that the Trustee is authorized and directed to take all actions and execute all documents necessary and appropriate to implement the Settlement Agreement and the underlying Settlement.

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Judge, United States Bankruptcy Court

copies to:

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