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January 8, 2007

Ms. Beth O'Donnell, Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

RECEIVED
JAN 9 2007
PUBLIC SERVICE
COMMISSION

RE: Touchtone Communication, Inc., and ALEC, Inc. v. Kentucky ALLTEL, Inc.,
P.S.C. Case No. 2005-00482

Dear Ms. O'Donnell:

On December 8, 2006, Windstream filed a status update letter with this Commission. That letter indicates that Windstream does not dispute that money is owed to ALEC. Specifically, Windstream estimates that it owes ALEC $52,421.56 in satisfaction of toll amounts through September 2006.

That letter represents the second time that Windstream has admitted owing funds to ALEC for toll traffic. On December 13, 2004, Stephen Weeks of Windstream (f/k/a ALLTEL) drafted and mailed a letter to ALEC's representatives estimating a balance due to ALEC of $64,998.99. (See attached)

Although ALEC contends that both of these amounts are gross understatements of the balance due to ALEC, it is important for the Commission to be apprised of the fact that Windstream does not dispute that some money is owed. Nonetheless, no payments have been made to ALEC over the course of this matter. ALEC has not undergone any name changes or address changes during the entire period of the interconnection with ALLTEL / Windstream.

The purpose of this letter is to informally request the Commission to enter an Order requiring the payment of the undisputed portion of funds in this matter to ALEC. At a minimum, ALEC requests a conference with Commission staff and Windstream to discuss release of this money. Payment of undisputed funds would certainly aid in expediting this matter.

Cordially yours,

Jonathon N. Amlung

cc: Mark Overstreet

ALLTEL COMMUNICATIONS
1 Allied Drive
1269-B5F4-D
Little Rock, AR 72202

Steve Weeks
Director – Wholesale Product Management

501-905-4619
501-905-6299 fax
stephen.weeks@alltel.com

December 13, 2004

VIA EXPRESS MAIL

John Dodge
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, N.W., Suite 200
Washington, D. C. 20006

Re: Touchtone, dba ALEC, Inc.

Dear Mr. Dodge:

Your letter dated November 19, 2004 addressed to Francis X. Frantz and Travis Jones demanding immediate payment in the amount of $6,407,818.65, plus interest, on behalf of your client, Touchtone, dba ALEC, Inc. ("ALEC") was referred to me for response. As will be explained below, ALLTEL has determined that ALEC is due, in accordance with the terms of our Interconnection Agreement ("ICA") and ALEC's tariff, payment in the amount of $64,998.99 for termination of access traffic based largely on the applicability of the appropriate percent local usage traffic ("PLU") factors.

Termination Rates

Your letter erroneously states that "the parties' ICA treats ISP-bound traffic "largely as local traffic." "Local Traffic" is defined at Article II, Section 1.59 of our ICA which clearly states: "Local Traffic ***excludes*** Enhanced Service Provider (ESP) and Internet Service Provider (ISP) traffic, including but not limited to Internet, 900-976 etc., and Internet Protocol based long distance telephony." (Emphasis added).

As part of its investigation of the ALEC demand, ALLTEL conducted test calls to the ALEC telephone numbers reflected on the billing records and determined that 96% of the calls from ALLTEL destined for ALEC were terminated to ISPs. Once the ISP traffic is excluded, the remaining 4% of the traffic terminated by ALEC should be used to calculate any compensation that may be due ALEC for Local Traffic and intraLATA toll traffic. Article 5 Section 4.3.5 of the ICA provides that the parties will utilize a Percent Local Usage (PLU) factor to identify the proper percent of Local Traffic carried on local interconnection trunks. The PLU factor listed in Appendix A of our ICA is 95%. Therefore, 95% of the remaining 4% of total traffic is deemed Local Traffic (for which Bill-and-Keep is the compensation regime applied in accordance with Article V, Section 3.2.2). The other 5% of this traffic is deemed to be access traffic ("Exempt Traffic") and is subject to ALEC's access rate of $0.029 per minute. Therefore, compensation due to ALEC for this Exempt Traffic is $64,998.99. For you convenience, calculations reflecting the above are attached to this letter.

Again, with respect to ISP bound traffic exchanged prior to June 14, 2001, your letter erroneously states that "the ICA provides that such traffic will be terminated at $0.004929 per minute of use." However, because the PLU factor applies only to local traffic -- which has been explicitly defined to exclude ISP bound traffic – this rate is inapplicable. We are unaware of any provision of the ICA that would apply the local interconnection rate element to ISP bound traffic.

Your letter also states with respect to "PLU ISP-bound traffic exchanged after June 14, 2001", that "the ICA provides that such traffic will be terminated pursuant to the Federal Communications Commission's *ISP Remand Order.*" While the letter relies on Article V, Section 3.2.3 of the ICA, Article V, Section 3.2.3 of the ICA explicitly states that each Party agrees that until the FCC enters a "final, binding, and nonappealable order" ("Final FCC Order"), the Parties will exchange ESP/ISP Traffic but "no compensation shall be owed for ESP/ISP Traffic exchanged between the Parties and neither party shall bill the other party for such traffic". Clearly, the parties agreed to a bill and keep arrangement until, such time as a "Final FCC Order" becomes applicable after which the Parties must meet to discuss implementation of the Order.

Neither of the requirements described in the preceding paragraph have been met. As noted in the ICA, the FCC issued an NPRM on prospective treatment of ESP/ISP Traffic[1]. Although the FCC released its *ISP Remand Order*, this order was not final and in fact, served as the basis for further judicial appeals. The *ISP Remand Order* – as the D.C. Circuit specifically acknowledged – was issued as an interim recovery scheme to aggressively eliminate the types of arbitrage opportunities for which your client is a prime example, and to allow the FCC time to conduct a more extensive evaluation in the NPRM proceeding (*ISP Remand Order*, paragraph 7). The *ISP Remand Order* makes numerous references to being an "interim" and "transitional" measure. By no means does this order meet the standard of the "final, binding, and nonappealable" contemplated by the ICA, particularly where the *ISP Remand Order* was itself appealed and remanded back to the FCC for further proceedings, which, as of the date of this writing, are ongoing. See, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, 14 FCC Rcd 3689 (1999) (*Initial Order*). *Bell Atlantic Tel. Cos. v. FCC, 340 U.S. App. D.C. 328, 206 F.3d 1, 5, 8 (D.C. Cir. 2000)*, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) (*ISP Remand Order*). WorldCom v. FCC, 288 F.3d 429 (D.C. Cir. 2002), *cert. denied*, 538 U.S. 1012 (2003).

At such time as a "final, binding, nonappealable" order exists, resolving the jurisdiction and the appropriate compensation for ISP Traffic, the parties should meet to discuss the order, as required by the ICA. In other words, the parties should follow the express provisions of the ICA.

Finally, your letter contends that ALLTEL's predecessors (Verizon and GTE) generally abided by the terms of the ICA with respect to termination charges and expects ALLTEL to do the same. However, it is our understanding that ALLTEL's position in this matter conforms to the position taken by both Verizon and GTE on this same issue. We are advised that both Verizon and GTE also disputed the ALEC invoices for compensation for ISP Traffic and paid only the intraLATA access portions of those invoices. As stated above, ALLTEL has determined that compensation is due ALEC for intraLATA toll access in the amount of $64,998.99.

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[1] Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689 (1999).

Facilities Charges

ALEC is correct that ALLTEL has billed for access services since September 2002. These invoices were generated as a result of Access Service Requests submitted by ALEC to ALLTEL for access services. (See attached example Access Service Request submitted by ALEC). However, considering the application of the services used, we have determined that it is more appropriate to classify the services requested by ALEC as cross-connects. ALLTEL will calculate the appropriate credit to be applied to ALEC's access bill and advise ALEC of this amount within 30 days of the date of this letter. Upon settlement of the issues discussed above, ALLTEL will apply the credit.

If you would like to discuss these issues further, please call me.

Sincerely,

Stephen Weeks

Stephen Weeks

KENTUCKY ALLTEL, INC - LEXINGTON
Summary of Billing from Touchtone d/b/a ALEC, Inc.

		A ALEC Bills	B Determined via test calls	C A * B	D A - C	E Appendix A	F D * E	G Appendix A	H G * H	I ALEC tariff	J H * I
Begin Date	End Date	Total Minutes	ISP %	ISP Minutes	Remaining Minutes	Percent Local Usage	Local Minutes	Access Factor	Access Minutes	ALEC Access Rate	Access Billing
8/1/2002	8/31/2002	44,042,317	96%	42,280,624	1,761,693	95%	1,673,608	5%	83,680	$ 0.029	$ 2,426.73
9/1/2002	9/30/2002	40,289,934	96%	38,678,337	1,611,597	95%	1,531,017	5%	76,551	$ 0.029	$ 2,219.98
10/1/2002	10/31/2002	47,815,165	96%	45,902,558	1,912,607	95%	1,816,976	5%	90,849	$ 0.029	$ 2,634.62
11/1/2002	11/30/2002	44,774,533	96%	42,983,552	1,790,981	95%	1,701,432	5%	85,072	$ 0.029	$ 2,467.08
12/1/2002	12/15/2002	18,744,911	96%	17,995,115	749,796	95%	712,307	5%	35,615	$ 0.029	$ 1,032.84
12/16/2002	12/31/2002	18,744,911	96%	17,995,115	749,796	95%	712,307	5%	35,615	$ 0.029	$ 1,032.84
1/1/2003	1/31/2003	33,243,450	96%	31,913,712	1,329,738	95%	1,263,251	5%	63,163	$ 0.029	$ 1,831.71
2/1/2003	2/28/2003	35,117,835	96%	33,713,122	1,404,713	95%	1,334,478	5%	66,724	$ 0.029	$ 1,934.99
3/1/2003	3/31/2003	40,024,102	96%	38,423,138	1,600,964	95%	1,520,916	5%	76,046	$ 0.029	$ 2,205.33
4/1/2003	4/30/2003	44,930,370	96%	43,133,155	1,797,215	95%	1,707,354	5%	85,368	$ 0.029	$ 2,475.66
5/1/2003	5/31/2003	48,524,502	96%	46,583,522	1,940,980	95%	1,843,931	5%	92,197	$ 0.029	$ 2,673.70
6/1/2003	6/30/2003	48,141,763	96%	46,216,092	1,925,671	95%	1,829,387	5%	91,469	$ 0.029	$ 2,652.61
7/1/2003	7/31/2003	46,623,098	96%	44,758,174	1,864,924	95%	1,771,678	5%	88,584	$ 0.029	$ 2,568.93
8/1/2003	8/31/2003	44,686,246	96%	42,898,796	1,787,450	95%	1,698,077	5%	84,904	$ 0.029	$ 2,462.21
9/1/2003	9/30/2003	42,775,245	96%	41,064,235	1,711,010	95%	1,625,459	5%	81,273	$ 0.029	$ 2,356.92
10/1/2003	10/31/2003	45,397,237	96%	43,581,348	1,815,889	95%	1,725,095	5%	86,255	$ 0.029	$ 2,501.39
11/1/2003	11/30/2003	48,019,228	96%	46,098,459	1,920,769	95%	1,824,731	5%	91,237	$ 0.029	$ 2,645.86
12/1/2003	12/31/2003	49,663,864	96%	47,677,309	1,986,555	95%	1,887,227	5%	94,361	$ 0.029	$ 2,736.48
1/1/2004	1/31/2004	50,829,687	96%	48,796,500	2,033,187	95%	1,931,528	5%	96,576	$ 0.029	$ 2,800.72
2/1/2004	2/29/2004	46,413,494	96%	44,556,954	1,856,540	95%	1,763,713	5%	88,186	$ 0.029	$ 2,557.38
3/1/2004	3/31/2004	47,471,787	96%	45,572,916	1,898,871	95%	1,803,928	5%	90,196	$ 0.029	$ 2,615.70
4/1/2004	4/30/2004	43,646,022	96%	41,900,181	1,745,841	95%	1,658,549	5%	82,927	$ 0.029	$ 2,404.90
5/1/2004	5/31/2004	40,311,336	96%	38,698,883	1,612,453	95%	1,531,831	5%	76,592	$ 0.029	$ 2,221.15
6/1/2004	6/30/2004	41,543,216	96%	39,881,487	1,661,729	95%	1,578,642	5%	78,932	$ 0.029	$ 2,289.03
7/1/2004	7/31/2004	42,440,956	96%	40,743,318	1,697,638	95%	1,612,756	5%	80,638	$ 0.029	$ 2,338.50
8/1/2004	8/31/2004	42,905,135	96%	41,188,930	1,716,205	95%	1,630,395	5%	81,520	$ 0.029	$ 2,364.07
9/1/2004	9/30/2004	40,952,289	96%	39,314,197	1,638,092	95%	1,556,187	5%	77,809	$ 0.029	$ 2,256.47
10/1/2004	10/31/2004	41,582,309	96%	39,919,017	1,663,292	95%	1,580,128	5%	79,006	$ 0.029	$ 2,291.19
		1,179,654,942	96%	1,132,468,744	47,186,198	95%	44,826,888	5%	2,241,344	$ 0.029	**$ 64,998.99**