COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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PUBLIC SERVICE COMMISSION

TOUCHSTONE,	)
d/b/a/ ALEC, Inc.	)
	)
COMPLAINANT	)
	)
V.	) **CASE NO. 2005-00482**
	)
KENTUCKY ALLTEL, INC.	)
	)
RESPONDENT	)

DIRECT TESTIMONY

OF

STEPHEN B. WEEKS

ON BEHALF OF WINDSTREAM KENTUCKY EAST, INC. F/K/A
KENTUCKY ALLTEL, INC.

Filed February 23, 2007

DIRECT TESTIMONY OF STEPHEN B. WEEKS

Q. Please state your name and business address.

A. My name is Stephen Weeks. My business address is 4001 Rodney Parham Drive, Little Rock, Arkansas 72212.

Q. By whom are you employed and in what capacity?

A. I am employed by Windstream Communications as Director of Wholesale Services. I am testifying in this proceeding on behalf of Windstream Kentucky East, Inc. f/k/a Kentucky Alltel, Inc. ("Windstream").

Q. Please describe your experience with Windstream and in the telecommunications industry.

A. I began my telecommunications career in 1994 with ALLTEL Corporation, serving in various managerial positions in wireless field operations including Vice President / General Manager. Since 1999, I have served in various managerial positions at corporate headquarters in Little Rock, Arkansas. My responsibilities over the last eight years included negotiating inter-carrier agreements and managing inter-carrier relationships. I was named Director of Wholesale Services in 2003, and my responsibilities in this position include management of Windstream's switched and special access services.

Q. What is the purpose of your testimony in this proceeding?

A. The purpose of my testimony is to respond to assertions set forth in the Complaint filed on November 28, 2005 by "TOUCHSTONE, d/b/a ALEC, Inc." with the Kentucky Public Service Commission ("Commission") and in the Amended Complaint filed on January 25, 2006 (the pleadings collectively, "Complaint"). At the time it filed the Complaint, ALEC, Inc. ("ALEC") asserted claims in excess of $8 million. Specifically, I will explain that ALEC's claims either have been satisfied or are unlawful and, therefore, that the Complaint should be denied.

A. INTRODUCTION

Q. What is your understanding with respect to the issues in this proceeding?

A. In its Complaint, ALEC essentially asserts two claims. First, ALEC alleges that it is entitled to compensation for terminating dial-up ISP-bound traffic from June 14, 2001 to August 2005. Second, ALEC asserts a claim for intra-LATA terminating access from August 2000 to August 2005. ALEC's claims are in error. Windstream has satisfied claims for traffic from August 2000 to November 2002. With respect to claims after November 2002, the interconnection agreement does not support ALEC's position that it is owed compensation for terminating dial-up ISP-bound traffic. In fact, the agreement provides that neither party to the agreement shall bill for ISP-bound traffic until certain events transpire which in fact have not occurred yet. Similarly, the agreement does not support ALEC's asserted amounts for intra-LATA terminating access, and ALEC's calculations are based on minutes that appear to include non-Windstream traffic and on an unconfirmed tariff rate. For these reasons and as discussed in greater detail below, ALEC's request for compensation in excess of $8 million is without merit.

B. THE INTERCONNECTION AGREEMENT

Q. What authority governs the issues in this proceeding?

A. ALEC asserts a claim for terminating dial-up ISP-bound traffic which involves various federal authorities, and its claim for intra-LATA terminating access also involves ALEC's tariff rates. Notwithstanding these authorities, the primary authority at issue in this proceeding is an interconnection agreement identified below.

Q. Pursuant to what agreement does ALEC assert its claims in the Complaint?

A. On August 26, 1999 in Case No. 99-318, the Commission approved the Interconnection Agreement, Resale and Unbundling Agreement ("Agreement") between GTE South Incorporated ("GTE") and Touchtone Communications, Inc. ("Touchtone"). Touchtone did not negotiate the provisions in the GTE/Touchtone Agreement but instead adopted the Agreement which was executed between GTE and AT&T. Although Windstream did not enter the Kentucky market until August 2002, it committed (in its acquisition proceeding) to honor the existing interconnection agreements of its predecessor in interest (Verizon South, Inc.). That commitment included honoring the Agreement, which is the agreement pursuant to which ALEC makes certain claims in this proceeding.

C. COMPENSATION UNDER THE AGREEMENT

Q. What types of traffic are compensable pursuant to the Agreement?

A. The Agreement provides compensation schemes for three primary types of traffic. First, pursuant to the Agreement, neither party may bill for ISP-bound traffic until certain events transpire. Article II, Section 1.31 defines Internet traffic (or, ISP-bound traffic) as traffic delivered to any enhanced or Internet service provider and states that such traffic is not included in local traffic. Article II, Section 1.59 of the Agreement explicitly excludes ISP-bound traffic from local traffic. Consequently, ISP-bound traffic must be considered separately from local traffic for purposes of compensation. Article V, Section 3.2.3 prohibits either party from billing the other for ISP-bound traffic until the Federal Communications Commission ("FCC") issues a final, binding, and nonappealable order and the parties adjust the Agreement to reflect the order. Neither of those events have happened. Second, local traffic is subject to bill and keep and is defined to explicitly exclude ISP-bound traffic. Specifically, Article II, Section 1.59 and Article V, Section 3.2.2 provide that local traffic is subject to bill and keep compensation, which is defined in Article II, Section 1.11 as an arrangement where the parties do not render bills to or compensate each other for exchanging certain traffic. Third, intra-LATA toll is compensable at the parties' applicable terminating access rates, pursuant to Article V, Section 3.2.4 which states that charges for interexchange traffic shall be in accordance with the parties' respective tariffs. The intra-LATA toll minutes to which those tariffed rates are applied are determined by using an Exempt Factor (the initial factor set forth in Appendix A, Section F.3.) to separate them from local traffic minutes.

Q. Do ALEC's claims in the Complaint accurately reflect these categories of traffic and the applicable compensation provided under the Agreement?

A. No. ALEC asserts incorrectly in its Complaint that all traffic delivered under the Agreement should be compensated as either local or toll. The Agreement recognizes various types of traffic that the parties may exchange such as local, interLATA and intraLATA toll, wireless traffic, and other traffic the Parties agree to exchange. (See, *e.g.*, Article V, Section 3.1.) For purposes of compensation, the Agreement recognizes three distinct categories of traffic - local, toll, and ISP-bound. (Article V, Sections 3.2.1 - 3.2.4.) Contrary to ALEC's suggestion that all traffic may be compensated as either local or toll, the Agreement recognizes three separate categories of traffic for compensation purposes. I will discuss in greater detail each of the compensation arrangements applicable to the three categories of traffic.

Q. What categories of Windstream traffic are delivered to ALEC?

A. Windstream delivers to ALEC ISP-bound, local traffic, and toll traffic.

Q. Of the traffic that Windstream terminates to ALEC, which of the three categories is the highest in volume?

A. Approximately 99% of the total traffic that Windstream terminates to ALEC is dial-up ISP-bound traffic. Windstream's tests revealed initially that at least 96% of the traffic is ISP-bound traffic but upon further tests confirmed that the number is 99%. Conversely, about 1% of the traffic that Windstream sends to ALEC is either local or intra-LATA toll traffic. I should note that because dial-up ISP-bound traffic is largely one-way traffic consisting of Windstream end users calling an internet service provider served by ALEC, there does not appear to be any corresponding ISP-bound traffic being sent from ALEC to Windstream. More specifically, the ISP-bound traffic for which ALEC asserts it is owed huge sums of money results from Windstream customers dialing an ALEC telephone number to access a dial-up Internet service provider.

<u>Compensation for ISP-Bound Traffic under the Agreement</u>

Q. What does the Agreement provide with respect to compensation for ISP-bound traffic?

A. Under the Agreement, neither ALEC nor Windstream may bill for dial-up ISP-bound traffic that it terminates to the other party until the FCC issues a final, binding and nonappealable order and the parties adjust the Agreement to reflect the FCC order. To begin, Article II, Section 1.59 of the Agreement excludes ISP-bound traffic from local traffic. Next, Article V, Section 3.2.3 of the Agreement states that "each Party agrees that until the FCC enters a final, binding and nonappealable order ("Final FCC Order"), the Parties shall exchange and each

Party may track ESP/ISP Traffic but no compensation shall be owed for ESP/ISP Traffic exchanged between the Parties and neither party shall bill the other for such traffic." (Emphasis supplied.) The Agreement further requires that once a Final FCC Order becomes applicable, the parties must meet to discuss implementation of the Final FCC Order and make adjustments to the Agreement to reflect the impact of the Final FCC Order. While ALEC alleged that the FCC has issued an order like the kind contemplated under the Agreement, the FCC in fact has not issued any such order, and the parties, therefore, have not adjusted the Agreement to reflect the impact of such an order.

Q. How do these provisions of the Agreement relate to the ISP-bound traffic terminated by Windstream to ALEC?

A. The Agreement excludes ISP-bound traffic from local traffic and sets forth a separate compensation scheme for ISP-bound traffic. Therefore, the parties must consider compensation for ISP-bound traffic separately from the minutes of use attributed to local traffic exchanged between the parties. Again, of the total traffic minutes delivered by Windstream to ALEC, approximately 99% of the minutes are for dial-up ISP-bound traffic. This is also consistent with ALEC's own representations to the Commission that its business plans are focused on addressing the needs of Internet service providers. (*See*, March 24, 2003 letter from Richard McDaniel's consulting firm to the Commission Attached as Exhibit A, noting a change of control of ALEC, Inc. and stating that "ALEC will continue to focus its business operations on the very specialized needs of ISP's.")

Accordingly, because this type of traffic is by far the largest category exchanged between the parties, it is logical to first address compensation with respect to ISP-bound traffic. Additionally, as I will explain, Windstream disputes that the total minutes of use (for ISP-bound, local, and toll traffic) as claimed by ALEC in this matter include only Windstream traffic. Nevertheless, whatever the total minutes of use are between ALEC and Windstream, we know that the overwhelming majority of the traffic that Windstream terminates to ALEC is dial-up ISP-bound traffic. Later, I will address the dispute with respect to the correct total number of minutes and how Windstream confirmed that 99% of the traffic is ISP-bound traffic.

Q. Does ALEC assert that it is owed compensation for ISP-bound traffic?

A. Yes. Despite the clear language in the Agreement to the contrary, ALEC asserts that it is entitled to bill and collect from Windstream charges for ISP-bound traffic. To reiterate, the Agreement provides explicitly that before either party to the Agreement may bill the other for ISP-bound traffic, the FCC must issue a final, binding, and nonappealable order and the parties must adjust the Agreement to reflect such an FCC order. These events have not happened. Indeed, even under ALEC's theory that the FCC's *ISP Remand Order*[1] is the type of order contemplated under the Agreement, ALEC still is not entitled to compensation for ISP-bound traffic as the provisions of the *ISP Remand Order* result in $0 compensation being due to ALEC.

Q. Specifically what action by the FCC does ALEC claim is a final, binding, and nonappealable order like that required under the Agreement?

A. ALEC asserts that when the FCC issued the *ISP Remand Order*, the order satisfied the requirements under the Agreement. It did not.

Q. Do you agree with ALEC's position in this proceeding with respect to ISP-bound compensation?

A. No. I am not an attorney and understand that the legal positions of the parties on the various FCC orders and notices of proposed rulemakings will be addressed in post-hearing briefs. However, I can testify that it is my experience that dial-up ISP-bound traffic typically generates large volumes of virtually all one-way traffic. Therefore, this type of traffic scenario creates the potential for arbitrage opportunities and is one reason that the FCC continues to contemplate the appropriate compensation scheme for ISP-bound traffic like the transitional compensation scheme it set forth in the *ISP Remand Order*. Similarly, the potential for arbitrage created by this one-sided and unbalanced traffic scenario presumably is the reason that GTE and AT&T negotiated Article V, Section 3.2.3. of the Agreement and distinguished ISP-bound traffic as a distinct traffic category for compensation purposes. ALEC accepted the language in the Agreement when it assumed Touchtone's obligations under the Agreement. This section of the Agreement very clearly provides that until the FCC enters a final, binding <u>and</u>

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[1] *In the Matter of 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, 16 FCC Rcd.

nonappealable order, the parties shall exchange and may track ISP-bound traffic but that no compensation shall be owed for such traffic and neither party shall bill the other for such traffic.

Q. Why was the *ISP Remand Order* not a final, binding, and nonappealable order by the FCC?

A. Again, while I am not an attorney, I am aware through my experience with interconnection issues that since the *ISP Remand Order*, the FCC has continued to evaluate and investigate Internet service compensation schemes. Consequently, the *ISP Remand Order* may not be considered final, binding, and nonappealable. For example, the FCC issued a notice of proposed rulemaking ("NPRM") [2] at the same time that it issued the *ISP Remand Order* to consider further issues of intercarrier compensation (including ISP-bound compensation).[3] Subsequent to that NPRM, the FCC issued in 2005 a Further Notice of Proposed Rulemaking ("FNPRM")[4] to further determine how to address compensation for ISP-bound traffic. In fact, in 1999, as GTE and AT&T recognized in the Agreement, the FCC issued an NPRM to begin evaluating the prospective treatment of ISP-bound traffic.[5] The FCC's evaluation of the treatment of ISP-bound traffic and intercarrier compensation continues today. Even aside from the ongoing NPRM, I am aware that the *ISP Remand Order* itself has served as the basis for further

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9151, Order on Remand and Report and Order (released April 27, 2001) ("ISP Remand Order")
[2] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, 16 FCC Rcd. 9610, Notice of Proposed Rulemaking (released April 27, 2001).
[3] *ISP Remand Order* at ¶2.
[4] FNPRM.
[5] 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).

judicial appeals. Furthermore, the FCC's NPRM released at the same time as the *ISP Remand Order* and the FNPRM released in 2005 remain pending.

Q. Has ALEC admitted that the *ISP Remand Order* was not a final, binding, and nonappealable order?

A. Yes. Curiously, ALEC admits in its Complaint that the FCC continues to wrangle with the ISP compensation scheme set forth in the *ISP Remand Order*. Most significantly, ALEC negotiated an interconnection agreement with Brandenburg Telephone Company approved by the Commission in Case No. 2005-00429 on November 4, 2005 ("ALEC/Brandenburg Agreement") and recognized in that agreement that the *ISP Remand Order* is not final, binding, and nonappealable. Section 3.5.1 of the ALEC/Brandenburg Agreement, states, "The Parties recognize that the treatment of traffic directed to ISPs is unresolved and the subject of industry wide controversy. The Parties further recognize that the long term resolution of issues related to ISP Traffic will affect both Parties and will likely necessitate modification to this Agreement." (Emphasis supplied.) Section 3.5.2 of the ALEC/Brandenburg Agreement states, "The Parties may treat ISP Traffic under these conditions until such time as a regulatory authority, court, or legislative body addresses the proper treatment of this traffic." (Emphasis supplied.)

Q. Has any Windstream affiliate agreed that the *ISP Remand Order* was a final, binding, and nonappealable order?

A. No. Windstream previously was affiliated with various Alltel entities, and while Windstream cannot speak on behalf of Alltel, I can speak to the facts of the Alltel entities that existed at the time of ALEC's Complaint. In its Complaint, ALEC referenced filings pertaining to Alltel affiliates in Florida and Wisconsin and attempted to demonstrate that these filings were inconsistent with Windstream's position in Kentucky that the FCC's *ISP Remand Order* was not final, binding, and nonappealable. ALEC is incorrect. To begin, Alltel entities in Florida and Wisconsin are not parties to the Agreement at issue in this proceeding. Additionally, Alltel was a wireless carrier in Wisconsin, not a CLEC as ALEC alleged, and in the Wisconsin amendment to which ALEC referred, Alltel did not construe the FCC's *ISP Remand Order* as being final, binding, and nonappealable. Finally, with respect to the Florida proceeding, Alltel specifically declined to sign the agreement referenced by ALEC and did not represent that the FCC's *ISP Remand Order* was final, binding, and nonappealable. Thus, there was nothing inconsistent between the Alltel Florida and Wisconsin entities and Windstream's affirmation in Kentucky that the *ISP Remand Order* is not final, binding, and nonappealable.

Q. Have other carriers in Kentucky adopted the same Agreement?

A. Yes. Other carriers in Kentucky operate under the same Agreement as ALEC.

Q. Does Windstream compensate other carriers operating under the Agreement for terminating dial-up ISP-bound traffic?

A. No. As I discussed above, the Agreement does not provide for any party to bill or charge for ISP-bound traffic until the FCC enters a final, binding, and nonappealable order and the parties adjust the Agreement to reflect such an order. To my knowledge, Windstream does not compensate any carrier operating under the Agreement for ISP-bound traffic, nor does any carrier bill Windstream for ISP-bound traffic under the Agreement.

Q. Does Windstream compensate any carrier in Kentucky for terminating dial-up ISP-bound traffic?

A. Yes. Windstream received requests from two carriers (Cinergy and Kentucky Telephone Company) to negotiate agreements providing for propspective compensation of ISP-bound traffic, and the parties in fact negotiated and executed such agreements. The agreements are on file with the Commission. Neither ALEC nor its predecessor made a similar request to Windstream, and ALEC continues to operate under the GTE/Touchtone Agreement which it previously adopted.

Q. Even if under ALEC's theory that the *ISP Remand Order* allows it to bill Windstream for dial-up ISP-bound traffic under the Agreement, is ALEC due any compensation?

A. No. Even under ALEC's position, the *ISP Remand Order* results in ALEC being due $0 compensation. The *ISP Remand Order* itself does not support ALEC's contention that it is entitled to millions of dollars of compensation for ISP-bound traffic from June 14, 2001 to August 2005. At Paragraph 7 of the *ISP Remand*

Order the FCC explains, "We also cap the amount of traffic for which any compensation is owed, in order to eliminate incentives to pursue new arbitrage opportunities." (Emphasis supplied.) Paragraph 78 of the *ISP Remand Order* provides that for the year 2001, a local exchange carrier ("LEC") may receive compensation for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to receive compensation under its agreement during the first quarter of 2001, plus a ten percent growth factor. For each subsequent year, the volume is equal to the cap for the previous year, plus another ten percent growth factor. The FCC recognized that the rate caps were designed to provide a transition toward bill and keep and that no transition was necessary for carriers already exchanging traffic below the caps. (See, Paragraphs 8 and 78 of the *ISP Remand Order*.) At Paragraph 77, the FCC affirmed that it was still considering the intercarrier compensation issues in the NPRM and that the ISP Remand Order was intended as an interim transition to a bill and keep regime. Specifically, the FCC warned carriers that it would be unwise to rely on continued receipt of reciprocal compensation for ISP-bound traffic and should begin the process of weaning themselves from these revenues.

Q. Was ALEC or its predecessor entitled to receive compensation for ISP-bound traffic under the Agreement during the first quarter of 2001?

A. No. Neither Windstream's predecessor nor ALEC billed each other or was entitled to bill each other for ISP-bound traffic in the first quarter of 2001. Indeed, under

ALEC's theory, billing for ISP-bound traffic would not have occurred until the FCC's *ISP Remand Order* which became effective on June 14, 2001. Thus, even under ALEC's purported theory, ALEC would not have been authorized to seek compensation for ISP-bound traffic under the Agreement until at least the <u>second quarter of 2001 since the *ISP Remand Order* was not even released until that time and contained no provisions for retroactive relief</u>. Put another way, even under ALEC's theory, ALEC was not entitled to and in fact did not receive any compensation for ISP-bound traffic under the Agreement during the first quarter of 2001. In fact, ALEC seems to admit that it was not entitled to compensation for ISP-bound traffic during the first quarter of 2001 since ALEC's Complaint only claimed ISP compensation during the second quarter of 2001 (*i.e.*, June 2001) forward. Moreover, ALEC did not even make a claim to Windstream's predecessor for compensation for ISP-bound traffic until March 20, 2002. Therefore, neither party to the Agreement received or was entitled to receive compensation for ISP-bound traffic during the first quarter of 2001.

Given that ALEC was entitled to $0 compensation for ISP-bound traffic during the first quarter of 2001, ALEC's cap on compensable ISP-bound traffic minutes for 2001 and subsequent years according to the *ISP Remand Order* is $0. In other words, applying the ten percent growth factor to the $0 cap, the result is still $0 (*i.e.*, 110% of $0 = $0). Consequently, even under the *ISP Remand Order*, Windstream is obligated to pay ALEC $0 compensation for ISP-bound traffic.

Q. Does the Agreement require only that the FCC issue a final, binding, and nonappealable order before the parties may begin billing for ISP-bound traffic?

A. No. The issuance of an FCC order is not the only requirement under the Agreement to initiate billing for ISP-bound traffic. In addition to the FCC issuing a final, binding, and nonappealable order (which has not happened), Article V, Section 3.2.3 of the Agreement provides also that the parties shall meet to adjust the Agreement to reflect implementation of such an order. Article III, Section 3 provides that any amendments to the Agreement (*e.g.*, changes to the existing provisions providing for no ISP compensation) must be in writing and signed by both parties. The Agreement does not provide that one party may proceed unilaterally with implementation of an ISP compensation scheme. In addition to the fact that the FCC has not issued an order of the finality contemplated under the Agreement, the parties also have not amended the Agreement to provide for billing of ISP-bound compensation.

Q. How does the fact that ALEC is not entitled to bill Windstream under the Agreement for ISP-bound compensation (or under ALEC's own theory is entitled to bill for $0 compensation) impact the amounts ALEC claims in its Complaint?

A. ALEC asserts claims exceeding $8 million, and to the extent that these claims include large amounts of compensation for ISP-bound traffic that at best is compensated at a $0, the claims should be denied. ALEC's calculations are based in large part on ALEC's attempts to categorize all traffic (including ISP-bound traffic) as either local or toll for compensation purposes. As I explained above, the Agreement provides for three types of traffic for compensation purposes (ISP-bound, local, and toll). The majority of the total traffic minutes terminated by Windstream to ALEC are for ISP-bound traffic. Accordingly, those minutes attributed to ISP-bound traffic must be considered separately from local or toll. As I addressed above, under either Windstream's position that ALEC is not entitled to bill for ISP-bound traffic or under ALEC's theory that the *ISP Remand Order* applies (which results in a cap of $0 compensation), Windstream does not owe ALEC compensation for any of the ISP-bound traffic minutes. Thus, the parties first must identify minutes attributed to Windstream's ISP-bound traffic delivered to ALEC and second must apply a $0 rate to such minutes. (*See, e.g.*, Article II, Sections 1.31 and 1.59 of the Agreement which explicitly exclude ISP-bound traffic from local traffic and Article V, Section 3.2.3 which sets forth a distinct compensation scheme for ISP-bound traffic separate and apart from local (Section 3.2.2) and toll (3.2.4) traffic.)

Q. Does Windstream agree that the total minutes invoiced by ALEC and referenced in its Complaint are accurate?

A. No. ALEC refused to respond to many of Windstream's data requests seeking traffic record information. (*See, e.g.*, ALEC's Responses to Windstream's Second Set of Data Requests Nos. 2-22 and 2-23.) As the carrier terminating the traffic, ALEC is the party responsible for recording the traffic. ALEC acknowledged that it does record the traffic delivered by Windstream but then refused to provide the details of those traffic recordings (in some instances claiming that the requests were not likely to lead to discoverable information). (*Id.*) Nevertheless, such traffic recordings are essential to calculating accurate compensation claims under the Complaint.

Q. What is the industry standard mechanism used by carriers to record the traffic information used to accurately calculate compensation?

A. While I am not an expert in this area, it is my understanding from my experiences working with telecom billing issues that Electronic Message Interface ("EMI") call records with industry standard formats are used to record and exchange this type of traffic information. (Exhibit B contains an example of a standard EMI.)

Q. What information is captured in an EMI call record?

A. The fields within an EMI call record are populated with specific details about each individual call, including the originating (or "from") telephone number, the terminating (or "to") telephone number, the Local Routing Numbers, the date, and the time the call connects and the duration of the call.

Q. Why is it significant to know the "from" and "to" telephone numbers for each call?

A. The "from" and "to" telephone numbers are used to determine the jurisdiction (*i.e.*, local or toll) of each call. The "from" and "to" number are then used to establish updated traffic billing factors, as required by the Agreement on a semi-annual basis.

Q. What are the Local Routing Numbers and why is it significant to know the Local Routing Numbers ("LRN") for each call?

A. There is an originating LRN and a terminating LRN. The LRN indicates the local exchange carrier currently using the particular telephone number. This became necessary as customers of CLECs and wireless carriers were permitted to transfer their telephone number from their ILEC service provider to their CLEC or wireless service provider. Within the industry, the practice of transferring a telephone number from one provider to another is known as porting.

The originating LRN would indicate whether in fact the call belonged to Windstream or whether the call belonged to another carrier (*i.e.*, CLEC or wireless carrier) that was routing its traffic to ALEC through Windstream's network. The terminating LRN would indicate whether the call belonged to ALEC or whether the call belonged to another carrier.

Q. Did ALEC provide Windstream the information contained within the fields of the EMI call record which are required to properly determine compensation?

A. No. As stated above, although ALEC admitted that it generates EMI records with respect to the traffic terminating to it, ALEC refused to provide this information to Windstream.

Q. What information did ALEC provide in response to Windstream's request for EMI records?

A. ALEC provided a "Billing Summary for ALLTEL Network." This document appeared to be some sort of internally generated summary of certain call information. Specifically, the Billing Summary provided the Called Number, the number of calls to a particular telephone number and the total seconds of the calls to the telephone number.

More importantly, the Billing Summary provided by ALEC excluded the "from" telephone number, the Local Routing Numbers, the date of the call, and the time the call connects and the duration of the call. Without this information neither Windstream nor the Commission can confirm that the total amounts and minutes claimed by ALEC in this proceeding.

Q. Why is ALEC the party responsible for providing the traffic records?

A. It is typical in the industry that the party attempting to support its invoices or bills provide supporting traffic records upon a request from the billed party. For unmeasured service to end users, carriers do not record their originating non-toll traffic. This is true for Windstream as well. In this instance, the traffic in dispute is traffic terminated to ALEC. As the terminating carrier, ALEC is responsible for recording the traffic, and as indicated in its responses to requests for admissions, ALEC claims that it in fact does record the traffic.

Q. Was Windstream able to conduct its own analysis of the calls delivered to ALEC?

A. Yes. Given ALEC's failure to provide adequate and complete record information, Windstream recorded a sample test and confirmed that there is non-Windstream traffic delivered to ALEC. Such non-Windstream traffic includes traffic routed through Windstream's network by other ILECs, CLECs, IXCs, and wireless carriers and is appropriately exchanged between the parties. However, what is improper is for ALEC to seek compensation from Windstream for non-Windstream traffic. Windstream has provided ALEC with transiting records from which ALEC can identify the non-Windstream parties whose traffic is being delivered to ALEC with Windstream's traffic. ALEC, therefore, should use those transiting records to bill the non-Windstream entities directly for compensation charges related to their traffic. Due to ALEC's failure to provide Windstream with requested record information, Windstream and this Commission cannot discern whether ALEC is properly billing those other entities for their respective traffic or instead is billing Windstream. The result of these considerations above is that neither Windstream nor the Commission can confirm that the total minutes claimed by ALEC in this proceeding include only Windstream traffic.

Q. Assuming that ALEC were to produce accurate total minutes for only Windstream traffic, which of those total minutes would be attributed to ISP-bound traffic?

A. Approximately 99% of the total traffic that Windstream terminates to ALEC is dial-up ISP-bound traffic. Windstream actually called the "to" numbers on prior records and verified that 99% of the calls were to dial-up ISPs.

Q. Assuming that ALEC's total minutes included only Windstream traffic (which they apparently do not), what is the impact of the 99% on those total minutes?

A. As previously explained, ISP-bound traffic under the Agreement is subject to its own compensation terms and conditions, separate from local traffic and toll traffic. Given Windstream's confirmation that at least 99% of the total traffic exchanged between the parties is ISP-bound traffic, then the remaining 1% of the traffic is a combination of local traffic and intraLATA toll traffic. Therefore, of the 2,192,703,194 total minutes claimed by ALEC from June 2001 to August 2005 (assuming for argument sake that these minutes included only Windstream traffic), 2,170,776,162 minutes should be categorized as ISP-bound traffic for compensation purposes. <u>Thus, those 2,170,776,162 minutes are subject to no or $0 compensation</u>. (Article II, Sections 1.31 and 1.59 of the Agreement and Article V, Sections 3.2.3 (ISP-bound traffic), 3.2.2 (local traffic), and 3.2.4 (toll traffic).)

Compensation for Local and Toll Traffic under the Agreement

Q. How are local and toll traffic defined under the Agreement?

A. As discussed above, the Agreement defines three categories of traffic for compensation purposes: ISP-bound traffic, local traffic, and toll traffic. Article II, Section 1.59 of the Agreement excludes ISP-bound traffic from the definition of local traffic. Article V, Section 3.2.4 of the Agreement states that charges for termination of toll traffic shall be in accordance with the parties' respective access tariffs. Appendix A, Section F.3. sets forth the initial factor used to determine which non-ISP-bound traffic minutes are local traffic and which are toll minutes.

Q. How are minutes associated with local and toll traffic accounted for under the Agreement?

A. As explained above, approximately 99% of the total traffic terminated by Windstream to ALEC is dial-up ISP-bound traffic, which is excluded from the definition of local traffic under the Agreement. After accounting for those minutes associated with ISP-bound traffic, the parties must look at the remaining 1% to determine which of those remaining minutes are local or toll. Assuming again that ALEC's claimed total minutes included only Windstream traffic, the remaining 21,927,032 minutes (or 1% of the total minutes) are a combination of local and toll traffic minutes. As discussed below, the Agreement applies an initial factor (to be updated periodically by the parties) to segregate the remaining 1% between local and toll traffic. Pursuant to the initial factor, 95% of the non-ISP-bound traffic is local, and the remaining 5% may be considered toll traffic.

Q. How are local and toll traffic minutes compensated under the Agreement?

A. The Agreement provides that local traffic is subject to a bill and keep compensation regime. Toll traffic is subject to a party's terminating access rates.

Q. Do you agree that the initial factor of 95%/5% set forth in Appendix A of the Agreement accurately reflects the division of non-ISP local and toll traffic delivered by Windstream to ALEC?

A. No. The Agreement establishes an initial Percent Local Usage ("PLU") factor of 95% to be used to distinguish non-ISP-bound local traffic minutes from toll traffic minutes. However, the Agreement also requires in Article V, Section 4.3.5 that ALEC provide Windstream with an updated PLU factor on a semi-annual basis.

Q. Did ALEC provide Windstream with an updated and accurate PLU factor semi-annually as required by the Agreement?

A. No. Windstream began operating in Kentucky in 2002 and was assigned the Agreement by operation of law. Thereafter, Windstream became aware that ALEC may have been incorrectly applying the PLU factor with respect to invoices from August 2002 to January 2003. Consequently, Windstream requested in a letter to ALEC dated March 4, 2003 an updated PLU factor and call records supporting ALEC's factors.

Q. Did ALEC provide an updated PLU factor and supporting call records?

A. No, it did not. ALEC has not supplied an updated PLU factor and has continued applying the 95% / 5% local and toll factors to its total claimed minutes (inclusive of ISP-bound traffic).

Q. What is the impact of ALEC applying the 95% local/ 5% toll factors to the total minutes of ISP-bound, local, and toll traffic?

A. ALEC is attempting to artificially inflate its toll traffic minutes by applying the PLU factor and Exempt factor to *all* minutes Windstream terminates to ALEC. In other words, ALEC is attempting to collect terminating access compensation on traffic minutes that are actually ISP-bound traffic.

Q. Is it correct for ALEC to combine ISP-bound traffic minutes with local and toll traffic minutes for purposes of compensation?

A. No. ALEC's actions are inconsistent with the Agreement. Article V, Section 3.2 of the Agreement outlines the compensation terms and conditions for three specific and separate forms of traffic, ISP-bound traffic (not compensable or compensable at a $0 rate), local traffic (subject to bill and keep compensation) and toll traffic (subject to the parties' access tariffs). Each of these three forms of traffic is separate from the other and each has unique compensation schemes.

Q. What is the result of ALEC's actions on its invoices to Windstream?

A. ALEC's application of the factors to total traffic minutes (including ISP-bound, local, and toll minutes) greatly overstates the amount of compensation that ALEC is owed for terminating toll traffic under the terms of the Agreement. For example, in December 2006, ALEC billed Windstream for 32,714,646 total minutes. ALEC applied the 95% local factor to the total minutes (including ISP-bound traffic which is excluded from local traffic) and applied the 5% Exempt factor to the remaining traffic and billed Windstream for 1,635,732 intraLATA toll minutes at a rate of $0.029 per minute (a rate that ALEC has yet to support as its tariffed rate). The result was that ALEC attempted to bill Windstream for 1,635,732 minutes of intraLATA toll traffic in the amount of $47,436.24. Even assuming that ALEC's total minutes included only Windstream traffic, the amount of minutes that ALEC should have billed as toll and billed at access rates should have been 16,357. These 16,357 toll minutes are properly calculated by first accounting for the ISP-bound traffic (99% of the 32,714,646 total minutes). The remaining 327,146 minutes then should be segregated between local and toll traffic. By applying the Exempt factor of 5% to the 327,146 minutes, the correct quantity of toll minutes are properly calculated to be 16,357. If ALEC's tariffed access rate of $0.01402 (as discussed below) is applied to those 16,357 toll minutes, the resulting toll compensation, based on the minutes billed by ALEC for December 2006, is $229.33.

Q. Does Windstream have this problem with other carriers that operate under the Agreement?

A. No. Windstream does not appear to have similar problems with other carriers in Kentucky, because to the best of our knowledge, the other carriers bill Windstream according to actual traffic exchanged and do not rely on factors like ALEC does.

Q. Were you able to validate ALEC's invoices?

A. No. As I mentioned previously, ALEC's invoices incorrectly apply factors set forth in the Agreement to inflate the number of toll minutes on which it claims it is owed terminating access compensation. Additionally, ALEC's invoices contain conflicting information with respect to total minutes billed. For example, for August 2002, ALEC submitted to Windstream two separate invoices for August 2002, one reflecting 44,042,317 minutes and the other reflecting 49,009,275 minutes. Likewise, for September 2002, ALEC billed Windstream for 40,289,934 minutes on one invoice, 41,968,800 on another invoice for the same time period and 45,062,271 minutes on yet another invoice for September 2002. Similarly, for October 2002, ALEC billed Windstream for 47,815,165 minutes on one invoice, 49,807,464 minutes in another invoice and 53,472,305 in another invoice all for October 2002. For November 2002, ALEC billed Windstream 44,774,533 minutes on one invoice and 46,640,138 minutes on another invoice and 50,071,928 minutes on another invoice for November 2002. For December 2002, ALEC billed Windstream for 23,431,139 minutes on one invoice and 37,489,822 minutes on another invoice. For January 2003, ALEC billed Windstream for 20,772,159 minutes on one invoice, 21,603,045 minutes on another invoice and

33,243,450 on yet another invoice for the same month. For February 2003, ALEC invoiced Windstream 23,046,079 minutes and 35,117,835 minutes for the same month on two separate invoices. Many of the invoices also contain a toll rate of $0.029 which is inconsistent with the rate of $0.01402 that ALEC certified to Windstream was its correct tariff rate for the periods of time in question. ALEC subsequently suggested that its tariff rate was yet another rate after discussing with Windstream that it believed the compensation calculations appeared to low.

Q. Have there been additional concerns raised by the rates and calculations on ALEC invoices sent to Windstream?

A. Yes. On November 19, 2004, ALEC presented Windstream with a grand total invoice identified by ALEC as "Invoice No. WTF200400-GT". The invoice indicated ALEC was billing Windstream for 1,406,384,691 minutes of local traffic at a rate of $0.004929 per minute for a total of $6,586,001.06. The correct calculation for 1,406,384,691 minutes at a rate of $0.004929 per minute would be $6,932,070.14, not the $6,586,001.06 indicated on ALEC's invoice. On the same invoice, ALEC billed Windstream for 170,020,247 toll minutes at a rate of $0.029 per minute for a total of $246,529.36. The correct calculation for 170,020,247 minutes at a rate of $0.029 would be $4,930,587.16, not the $246,529.36 indicated on ALEC's invoice.

Q. Were there additional reasons for concern regarding the validity of the minutes and rates presented in ALEC's invoices?

A. Yes. On December 6, 2004, ALEC increased the minutes in an amended "WTF200400-GT" invoice to 2,077,852,649 local minutes and 98,229,660 toll minutes. Additionally, ALEC invoiced Windstream at a rate of $0.029 for toll minutes from July 2004 to November 2004, a rate which ALEC has yet to substantiate as its filed tariffed rate.

Q. Is this the same manner in which ALEC billed Windstream's predecessor?

A. I cannot confirm what minutes of use ALEC included in its invoices to Verizon or what the distribution of traffic (*i.e.*, ISP-bound, local, and toll) may have been between the parties at that time. Nevertheless, it is my understanding that ALEC billed Verizon in a manner that was not consistent with the Agreement (including the 95%/ 5% factors in the Agreement). ALEC first billed Verizon in February 2002 for toll traffic delivered during January 2002 and continued billing Verizon for toll traffic delivered from February 2002 through July 2002. In its billings to Verizon, ALEC multiplied its total claimed traffic minutes times 99% and designated the remaining 1% as toll. If Verizon did not dispute this methodology, it may have been because this method closely approximated the actual distribution of traffic exchanged between the parties at that time.

Q. Is the application of this 99% to total traffic minutes consistent with the Agreement?

A. No. For the reasons set forth previously, inclusion of ISP-bound traffic with local and toll traffic for compensation purposes directly contradicts the Agreement's explicit provisions that ISP-bound traffic is excluded from local traffic. Again, Windstream also confirmed that at least 99% of the traffic it terminates to ALEC is dial-up ISP-bound traffic which is not compensable, or at best, compensable at a $0 rate.

Q. What is the impact of the "ALEC/Verizon Method" on the amounts ALEC claims in its Complaint are due by Windstream?

A. ALEC's application of terminating access charges to 1% of the total traffic minutes still inflates the amount of compensation that ALEC is actually due for toll traffic. However, even using the purported "ALEC/Verizon Method" as suggested by ALEC in its November 14, 2006 update to the Commission in this proceeding, the calculations yield far less compensation than that asserted by ALEC in its Complaint. For example, applying a 1% factor to ALEC's total claimed minutes (assuming for argument sake that the minutes include only Windstream traffic) at a rate of $0.01402 (as ALEC asserted was its verified tariffed rate and that which has been on file with the Commission since at least August 15, 2004), the compensation would be approximately $500,000, and not millions of dollars as asserted by ALEC in its Complaint. It is difficult to calculate an exact number given ALEC's failure to produce records verifying that the total claimed minutes include only Windstream traffic.

Q. Has Windstream remitted any compensation to ALEC for termination of intra-LATA toll?

A. Yes. Windstream remitted payment for periods prior to December 2002 as discussed herein. Additionally, Windstream remitted a check to ALEC on January 31, 2007 for over $52,000 for termination of intra-LATA toll through September 2006. Given the factors above with respect to the majority of the traffic being ISP-bound traffic and not toll traffic, this amount is reasonable to compensate ALEC for termination of that traffic which may be attributed to intraLATA toll. I should note that Windstream utilized ALEC's total minutes to calculate this amount, but Windstream continues to question whether ALEC is including non-Windstream traffic in the total traffic minutes claimed.

D. ALEC'S IDENTITY AND SATISFACTION OF ALL CLAIMS PRIOR TO DECEMBER 2002

Q. Does ALEC's Complaint seek compensation for traffic exchanged between the parties prior to December 2002?

A. Yes. ALEC contends that Windstream owes ALEC money for various categories of traffic from August 2000 through November 2002.

Q. Are ALEC's claims for compensation for these prior time periods valid?

A. No. To begin, ALEC was not entitled to bill Windstream or Verizon for ISP-bound traffic during these time periods. Moreover, Windstream and its predecessor (Verizon) already compensated the proper ALEC affiliate (DURO) for traffic delivered through November 2002. Verizon and Windstream paid ALEC over $275,000 for toll compensation for all periods prior to November 2002. Specifically, Verizon compensated ALEC over $160,000 for toll traffic delivered through July 2002. Further, as evidenced by the check to Duro ALEC Settlement Group dated March 9, 2005 (copy attached to Windstream's Motion to Dismiss), Windstream compensated the ALEC affiliate owning receivables for toll traffic from August 2002 through November 2002. Neither Verizon's or Windstream's compensation to ALEC included amounts for ISP-bound traffic as none was owed or billed.

Q. Why then does ALEC claim that it is still owed compensation for traffic exchanged prior to December 2002?

A. Essentially, ALEC asserts that the ALEC affiliate that Windstream compensated was not the proper party in interest. This is incorrect, and ALEC has failed to prove otherwise. On December 6, 2004, John Dodge (a representative of the ALEC entity pursuing the Complaint) acknowledged that Windstream should not be presented with competing claims for compensation for the same time periods and stated that ALEC had removed from its invoices amounts for the months of August through November 2002. Curiously, in its data request responses, ALEC claimed to have no prior knowledge that its DURO affiliate had billed Windstream for compensation for the same time periods sought by ALEC in its Complaint. (ALEC's Response to Windstream's First Data Request No. 5.)

Q. Who represented "ALEC" in pursuit of the claims for compensation prior to December 2002?

A. Richard McDaniel represented "ALEC" with respect to claims for toll compensation prior to December 2002. Mr. McDaniel consistently had been an ALEC representative in industry negotiations and before the Commission. (See, *e.g.*, Exhibit A to my testimony.) On February 3, 2005, Mr. McDaniel notified Windstream that ALEC, Inc. was sold to Wispnet NC LLC and all of ALEC, Inc.'s receivables up to the sale to Wispnet (December 2002) were purchased by Duro ALEC Settlement Group. Mr. McDaniel confirmed that any receivables from December 2002 forward remained with ALEC, Inc.

Q. Who is the party asserting the claims in the Complaint?

A. Initially, the Complaint was filed by "TOUCHSTONE, d/b/a ALEC, Inc." which implies that Touchtone and ALEC are one legal entity merely operating under the name, ALEC, Inc. Subsequently in this proceeding, ALEC represented that there are two distinct parties pursuing the complaint - Touchtone Communications, Inc. and ALEC, Inc. As noted below, based on information pertaining to the purchase of ALEC, Inc. by Wispnet NC, LLC, it is questionable whether ALEC, Inc. had any authority to continue operating or pursuing claims under the Agreement beyond December 16, 2002.

Q. What have you been able to discern about ALEC's affiliation with Touchtone and other entities such as DURO Communications?

A. ALEC's relationship to various entities is confusing, and Kentucky Secretary of State documents reflect ties to a host of entities (*e.g.*, Connectup, Optilink, Volaris, Gietel, DURO). In its responses to data requests, ALEC identified its prior management interests as Duro Communications and Wispnet NC, LLC (ALEC's Response to Second Data Request No. 2-2) and identified as its current affiliate its parent company, Wispnet NC, LLC (ALEC's Response to Second Data Request No. 2-14). ALEC stated that the only assumed name used by any of these entities was ALEC's alias of Volaris Telecom, Inc. (ALEC's Response to Second Data Request No. 2-17.) Moreover, ALEC stated that Duro Communications, Inc. acquired ALEC, Inc. in 1999 and that Wispnet NC, LLC subsequently acquired ALEC, Inc. in 2002. (ALEC's Response to Second Data Request No. 2-19.) ALEC further represented that it was at no time an affiliate of Duro Communications but that Duro Communications purchased the assets of ALEC. (Request for Admission Nos. 3 and 4.) Yet, ALEC then stated that it was the surviving entity in a merger with Duro Communications. (Request for Admission No. 5.) Based on this information, which is nebulous at best, it appears that ALEC was affiliated with Duro Communications.

Q. Did Windstream attempt to verify this information regarding ALEC's affiliations?

A. Yes. In order to try to make sense of the information above provided by ALEC, I reviewed documents filed with the Kentucky Secretary of State Office for the various entities referenced in ALEC's data request responses. The documents I reviewed reflect that ALEC, Inc. was incorporated in 1997 and had an assumed name of Volaris Telecom, Inc. Wispnet, LLC was organized in 2002 and had an assumed name of Connectup, Inc. Both ALEC and Wispnet, LLC listed Mark Hayes and Mark Elliott as key officers or members. Volaris Online, Inc. filed as an assumed name corporation in 2001 and listed Duro Communication Corporation and Duro Communications, Inc. as assumed names.

Q. Do any of these transactions or affiliations affect ALEC's rights to operate under the Agreement?

A. Yes. In Windstream's attempts to sort through the relationship between the various ALEC entities, it asked ALEC to provide copies of applicable asset purchase, merger and other similar transactional agreements. ALEC refused to answer all of the requests. (Second Data Request No. 2-10, 2-11.) However, Windstream did obtain a copy of a Common Stock Purchase Agreement dated December 16, 2002 which identifies a transaction between Wispnet NC, LLC and "Duro Communication Corporation, a Delaware corporation, d/b/a Volaris Online d/b/a ALEC." (Attached as Exhibit C.) To begin, the stock purchase agreement is confusing because it indicates that "ALEC" was just a "d/b/a" (or an assumed name) of Duro and not a separate entity from Duro. Additionally, the Common Stock Purchase Agreement defines Duro Communication Corporation, a

Delaware corporation, d/b/a Volaris Online d/b/a ALEC as "the Company" and provides that certain "Excluded Assets" remained with the Company and did not transition to Wispnet NC, LLC. (See Section 3 of the Common Stock Purchase Agreement; Emphasis supplied.) Among those Excluded Assets was the "Interconnection Agreement between ALEC and Alltel in KY and GA." Presumably, this reference is intended to be to the GTE/Touchtone Agreement in Kentucky which had been assigned to ALEC, Inc. Thus, it appears that while control of ALEC, Inc. was transferred to Wispnet NC, LLC, the rights under the Agreement remained with Duro. However, there is no record of any subsequent assignment, assumption, or adoption of the Agreement by ALEC, Inc. after its purchase by Wispnet NC, LLC. As a result, it is questionable whether ALEC, Inc. had any rights to continue operating under the Agreement after December 16, 2002 or whether ALEC may pursue any claims for compensation under the Agreement after that time.

Q. What is the result of the information above pertaining to ALEC's affiliations?

A. At a minimum, this information demonstrates that ALEC was affiliated with DURO Communications and that Windstream reasonably relied on information provided by DURO to compensate the apparent party in interest for claims prior to December 2002. Additionally, the information raises serious concerns about whether ALEC, Inc. was entitled to operate under the Agreement after December 16, 2002 or bring any claims for compensation thereunder.

Q. Can you please summarize your testimony?

A. The claims exceeding $8 million in ALEC's Complaint are without merit and should be denied. First, ALEC asserts claims for periods prior to December 2002 for which it is not the proper party in interest and for traffic which already properly was compensated, and it is questionable whether ALEC has any rights under the Agreement after December 16, 2002. Second, ALEC is not entitled to compensation for ISP-bound traffic. Pursuant to the terms of the parties' Agreement, ALEC may not bill each other for this type of traffic. Even under ALEC's theory that the FCC's *ISP Remand Order* entitled it to begin billing for ISP-bound compensation, ALEC has not amended the Agreement to reflect this event and still would be entitled to $0 compensation under the terms of the *ISP Remand Order* itself. Third, ALEC's invoices overstate the amounts it may be compensated for toll. ALEC's claimed total minutes are suspect and appear to include non-Windstream traffic. Based on ALEC's failure to produce adequate records and definitive proof of its lawfully tariffed access rates, it is difficult to calculate with any specificity the amount of toll compensation that may be due under the Agreement. Nevertheless, Windstream compensated ALEC over $50,000 to toll charges from December 2002 through late 2006. This amount is reasonable considering that the majority of the traffic delivered to ALEC is dial-up ISP-bound compensation which is at best compensated at $0.

Q. Does this conclude your testimony?

A. Yes, at this time.

AFFIDAVIT

STATE OF ARKANSAS	)	
	)	SS:
COUNTY OF PULASKI	)	

Stephen Weeks, being duly sworn according to law, deposes and says that he is Director of Wholesale Services for Windstream Communications, and that in this capacity he is authorized to and does make this Affidavit on behalf of Windstream Kentucky East, Inc., and that the facts set forth in the foregoing testimony are true and correct to the best of his knowledge, information and belief.

Stephen Weeks

Sworn and Subscribed to before me this 20th day of February, 2007.

(SEAL)

Notary Public

My Commission Expires:
8-10-2016

CYNTHIA DIANNE SLAVYCH
NOTARY
My Comm. Expires
Aug 10, 2016
PUBLIC
PULASKI COUNTY, ARKANSAS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 23rd day of February, 2007 upon:

Jonathon A. Amlung
Amlung Law Offices
616 South Fifth Street
Louisville, Kentucky 40202

Kristopher E. Twomey
Law Offices of Kristopher E. Twomey
1725 I Street NW
Suite 300
Washington, D.C.

Mark R. Overstreet

15325:1:FRANKFORT

EXHIBIT A

0 50 01400

ALEC

MT

McDaniel, Tinsley & Associates, Inc.
Telecommunications Management Consulting

March 24, 2003

Mr. Tom Dorman
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

Re: Wispnet, LLC and DURO Communications Stock Purchase and Transfer of Ownership and Control of ALEC, Inc.

05001400

Dear Mr. Dorman:

This letter is to notify the Kentucky Public Service Commission of the stock purchase and transfer of ownership and control of ALEC, Inc. d/b/a Volaris Telecom.

Wispnet, a privately held Kentucky LLC purchased the ALEC, Inc. stock and assumed ownership and control of the assets in Kentucky and Tennessee. (See Exhibit A). ALEC will continue to operate under the name of ALEC, Inc. removing the d/b/a Volaris Telecom, Inc. The purchase of stock and transfer of ownership and control were transparent to the customers of ALEC.

The Wispnet corporate headquarters is located at 250 West Main Street, (859) 254-9667 Suite 710, Lexington, KY 40507. Wispnet was founded to provide next-generation telecom services to Internet Service Providers and was formed by two members of DURO's senior management team. It was organized in October of 2002 as a separate entity. A certified copy of the Wispnet, LLC Articles of Organization is attached as Exhibit "B".

ALEC will continue to focus its business operations on the very specialized needs of ISP's. ALEC's goal is to provide an alternative to excessive rates and poor quality of local telecom services available to expanding Internet Service Providers as ALEC has been doing since it was merged with Touchtone Communications in October 1999.

4/7/03

Wispnet will continue to assist in the expansion of the ALEC network to meet and exceed the needs of its customers by providing the highest quality service at the fairest prices available. Under the new ownership, Wispnet plans to help ALEC grow more rapidly and compete more effectively.

ALEC continues to serve its customers throughout the State of Kentucky pursuant to the same rates, terms and conditions under which such customers were being served prior to the transfer of ownership. Thus, the stock purchase and transfer of ownership and control did not have an adverse impact upon customers in Kentucky and did not result in any interruption or diminution in the quality of service provided. Kentucky consumers will benefit from the availability of an increased variety of products and service options for local exchange services under the new ownership of Wispnet.

Wispnet, LLC possesses all financial, managerial and technical qualifications necessary to complete the transfer of ownership. A highly qualified team of management personnel manages Wispnet with extensive experience in the telecommunications industry. This team is made up of managerial and technical personnel that managed and operated ALEC. Brief biographical statements concerning Wispnet management and technical personnel are attached as Exhibit "C".

As needed, Wispnet will also use the consulting services of McDaniel, Tinsley & Associates, Inc. Brief biographical statements are attached as Exhibit "D".

I have enclosed a copy of the ALEC, Inc. Local Exchange Services Tariff removing the d/b/a Volaris Telecom, Inc. and reflecting the new ownership and corporate address. Please replace the tariff and return a date stamped copy of this filing and the tariff in the self-addressed stamped envelope. If you have any questions or need additional information, please contact Judy Tinsley on (770) 425-4725.

Sincerely,

Judy Tinsley

Judy Tinsley
McDaniel, Tinsley & Associates, Inc.

Enc.

Cc: Mark Hayes – ALEC, Inc.
Bill Feldman – Kentucky PSC

EXHIBIT B

CARRIER ACCESS USAGE
NORTH AMERICAN ORIGINATED AND TERMINATED MESSAGE TELEPHONE SERVICE

Record Name

11	01	01
Category	Group	Record Type

Pos	Field Description		Char
1–2	Category	Record Identification	X
3–4	Group		
5–6	Record Type		
7–8	Year	Date Of Record	9
9–10	Month		
11–12	Day		
13–14	From Number Length		9
15–17	NPA	* From Number	9
18–20	NXX		
21–24	Line Number		
25–27	Overflow Digits		9
28–29	To Number Length		9
30–32	NPA	* To Number	9
33–35	NXX		
36–39	Line Number		
40	Originating / Terminating ID		9
41–44	BSA / Feature Group D Trunk Group Number		9
45	Reserved		9
46–49	Carrier Identification Code		9
50	Carrier Access Method		9
51	Routing Method		9
52	Dialing Method		9
53	ANI		9
54	NCTA		9
55–56	Hr	Connect Time	9
57–58	Min		
59–60	Sec		
	Min	Billable Or Reported Time	9
	Sec		
	[illegible]		

Pos	Field Description		Char
68–69	Method Of Recording		9
70–71	Return Code		X
72–74	From RAO		X
75	Local Company Information	Cust Bill Format	9
76–77		Conference Leg Number	9
78–79	Type of Access Service		9
80	Reserved		9
81	Method Of Signaling		9
82–101	1–20	Indicators	9
102–103	Operator Unit	Serial Number	9
104–110	Recording Point Identification (AMA)		
111–112	CABS Billing RAO		X
113–122	21–30	Indicators	9
	NPA	BSA Feature Group A Access Number	9
	NXX		
	Line Number		
	Reserved for Local Company Use		9

Pos	Field Description		Char
135	Reserved for Local Company Use (continued)		9
136–137	Reserved		9
138–141	NECA Company Code		X
142–143	BSA / Feature Group D Call Event Status		9
144–145	Reserved		9
146	BSA / Feature Group D Code		X
147–148	Library Code		X
149	Settlement Code		X
150–153	Min	Conversation Time	9
154–155	Sec		
156	1/10		
157–166	Originating LRN		9
167–170	Originating OCN		X
171	Originating LRN Source Indicator		9
172–181	Terminating LRN		9
182–185	Terminating OCN		X
186	Terminating LRN Source Indicator		9
187–190	Send To CCN		X
191–	Reserved		9

EXHIBIT C

COMMON STOCK PURCHASE AGREEMENT

This Common Stock Purchase Agreement (the "Agreement"), is entered into as of December 16, 2002 by and among Wispnet NC, LLC a North Carolina limited liability company ("Purchaser") and Duro Communication Corporation, a Delaware corporation, d/b/a Volaris Online d/b/a ALEC (the "Company").

Background

The Company desires to sell to Purchaser, and Purchaser desires to purchase from the Company, all of the issued and outstanding shares of common stock of ALEC, Inc., a Kentucky corporation and a wholly-owned subsidiary of the Company ("ALEC"), on the terms and conditions set forth in this Agreement. Therefore, in consideration of the promises and mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Terms

1. **Sale and Purchase of Shares.**

1.1 Authorization. The Company has authorized the sale to Purchaser, pursuant to the terms of this Agreement, of all of the issued and outstanding capital stock of ALEC consisting of One Thousand (1,000) shares of common stock (the "Shares").

1.2 Sale. Subject to the terms and conditions set forth herein, the Company hereby agrees to sell to the Purchaser, and the Purchaser hereby agrees to purchase from the Company, the Shares at the Closing (as defined below).

2. **Purchase Price.** The purchase price ("Purchase Price") for the Shares shall be Twenty-Five Thousand Dollars ($25,000.00). The Purchaser shall pay the full Purchase Price to the Company at Closing (as defined below).

3. **Excluded Assets.** The assets, rights and causes of action of ALEC listed on Exhibit A hereto (the "Excluded Assets") shall not be a part of this transaction and shall remain the sole property of the Company.

4. **Closing.** Subject to the terms and conditions of this Agreement, the sale of the Shares, and the full payment of the Purchase Price, shall take place at the closing (the "Closing") to be held at the offices of Holland & Knight LLP, 200 S. Orange Avenue, Suite 2600, Orlando, Florida. The Company acknowledges that as of Closing, the Purchaser will own all assets and liabilities of ALEC.

The Purchaser is free to operate ALEC as it wishes and except for its continued ownership of the Excluded Assets, the Company will have no further claims upon ALEC. However, both parties acknowledge and agree that even through the Agreement has been reached, due to the required approval of the stock transfer by the North Carolina Utility Commission ("NCUC"), the Company will hold the stock on the Purchaser's behalf until the earliest of the following: (1) on or before January 31, 2003; or (2) within two days after the Purchaser notifies the Company that the required regulatory approval of the NCUC has been obtained.

5. **Representations and Warranties of the Company.** The Company hereby represents and warrants to the Purchaser the following:

5.1 **Organization and Standing; Articles of Incorporation and Bylaws.** The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, and has full power and authority to own and operate its properties and assets and to carry on its business as presently conducted. The Company is duly qualified and authorized to do business, and is in good standing as a foreign corporation, in each jurisdiction where the nature of its activities and of its properties (both owned and leased) makes such qualification necessary and where a failure to so qualify would have a material adverse effect on its business or properties.

5.2 **Corporate Power.** The Company has all requisite legal and corporate power to execute and deliver this Agreement, to sell the Shares hereunder and to carry out and perform its obligations under the terms of this Agreement.

5.3 **Authorization.** All corporate action on the part of the Company, its officers, directors and shareholders necessary for the authorization, execution and delivery of this Agreement, the performance of all the Company's obligations hereunder and thereunder, and for the sale and delivery of the Shares has been taken. This Agreement, when executed and delivered, shall constitute the valid and legally binding obligation of the Company enforceable in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies.

5.4 **Validity of Shares.** The Shares, when sold and delivered in compliance with the provisions of this Agreement, will be validly issued, fully paid, and nonassessable, and will be free of any liens or encumbrances; provided, however, that the Shares may be subject to restrictions on transfer imposed by state and/or federal securities laws as set forth herein or as otherwise required by such laws at the time a transfer is proposed.

5.5 **Assets of ALEC.** The known assets of ALEC (other than the Excluded Assets) are listed on Exhibit B hereto (the "ALEC Assets"). However, the parties understand and acknowledge that there may be additional assets of ALEC not listed on Exhibit B, which the Purchaser shall acquire pursuant to this Agreement subject to the written agreement of the parties.

5.6 **Absence of Undisclosed Liabilities.** Except to the extent reflected on Exhibit C, hereto, to the knowledge of the Company ALEC has no material liabilities of any nature, whether accrued, absolute, contingent, or otherwise. The Company represents and warrants that it does not know of any basis for the assertion against ALEC of any material liability of any nature or in any amount not fully reflected on Exhibit C.

5.7 **Litigation.** There is no litigation or proceeding pending, or to the Company's knowledge threatened, against or relating to ALEC, its properties, or business, nor does the Company know of any basis for any such action, or of any governmental investigation relative to ALEC, its properties, or business with the exception of the complaints referenced in Item 6 of Exhibit A (Excluded Assets).

5.8 **Leases, Contracts, and Licenses.** The Company represents and warrants that the transfer of the Shares in accordance with the terms of this Agreement will not constitute a prohibited assignment or transfer of any of its licenses, leases, or contracts, and that any of the foregoing will remain in full force and effect without acceleration as a result of this transaction.

6. **Representations and Warranties of the Purchaser.** Purchaser hereby represents and warrants to the Company as follows:

6.1 **Legal Power.** Purchaser has the requisite legal power to enter into this Agreement, to purchase the Shares hereunder, and to carry out and perform its obligations under the terms of this Agreement.

6.2 **Due Execution.** This Agreement has been duly authorized, executed and delivered by Purchaser, and, upon due execution and delivery by the Company, this Agreement will be a valid and binding agreement of Purchaser enforceable in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies.

7. **Access and Information.** The Company shall allow the Purchaser reasonable access, during normal business hours throughout the period prior to the Closing, to all of ALEC's properties, books, contracts, commitments, and records, and shall furnish the Purchaser during such period with all such information concerning ALEC's affairs as the Purchaser reasonably may request.

8. Conduct of Business Pending Closing. The Company covenants that, pending the Closing:

(a) ALEC's business will be conducted only in the ordinary course.

(b) No change will be made in ALEC's Certificate of Incorporation or Bylaws, except as may be first approved in writing by the Purchaser.

(c) No change will be made in ALEC's authorized or issued corporate shares.

(d) No dividend or other distribution or payment will be declared or made in respect of ALEC's corporate shares.

(e) No contract or commitment will be entered into by or on behalf of ALEC extending beyond December 31, 2002.

(f) No contract right of ALEC will be waived.

9. Conditions Precedent. All obligations of the parties under this agreement are subject to the fulfillment, prior to or at Closing, of each of the following conditions:

(a) As to Purchaser:

(i) Representations and Warranties True at Closing. The Company's representations and warranties contained in this Agreement shall be true at the time of Closing as though such representations and warranties were made at Closing.

(b) As to the Company:

(i) Representations and Warranties True at Closing. The Purchaser's representations and warranties contained in this Agreement shall be true at the time of Closing as though such representations and warranties were made at Closing.

10. Miscellaneous.

10.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to the conflicts of laws provisions thereof.

10.2 Survival. The representations, warranties, covenants, and agreements made herein shall survive the closing of the transactions contemplated hereby.

10.3 Successors and Assigns. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties hereto.

10.4 Entire Agreement. This Agreement, the Exhibits hereto and the other documents required to be delivered pursuant hereto constitute the full and entire understanding and agreement between the parties with regard to the subject matter hereof and no party shall be liable or bound to the other party in any manner by any representations, warranties, covenants, or agreements except as specifically set forth herein or therein. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided herein.

10.5 Separability. In case any provision of this Agreement shall be invalid, illegal, or unenforceable, it shall to the extent practicable, be modified so as to make it valid, legal and enforceable and to retain as nearly as practicable the intent of the parties, and the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

10.6 Notices. Except as otherwise expressly provided in this Agreement, any notice or request to be given hereunder by either party to the other shall be in writing and may be affected either by personal delivery or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the following addresses, but either party may change its notice address by providing written notice to the other in accordance with this Subsection.

If to the Company:
Duro Communication Corporation
1101 Greenwood Blvd.
Suite 201
Lake Mary, FL 32746
Attention: Steven G. Sapp

with a copy to:
Holland & Knight LLP
200 South Orange Avenue, Suite 2600
Orlando, Florida 32801
Facsimile: (407) 244-5288
Attn: Louis T.M. Conti, Esq.

If to Purchaser:
Wispnet NC, LLC
250 West Main Street, Suite 710
Lexington, Kentucky 40507

Attn: Mark Elliott

10.7 **Fees and Expenses.** Each party shall pay its own legal expenses relating to this Agreement. If legal action is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and legal costs in connection therewith.

10.8 **Titles and Subtitles.** The titles of the Sections and Subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

10.9 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

10.10 **Gender.** All references to "Purchaser," "it" or "he" herein shall be deemed to include the masculine and the feminine with reference to any individuals and the neuter with reference to any artificial persons.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

"COMPANY"

DURO COMMUNICATION CORPORATION

By: Steven G. Sapp

Name: Steven G. Sapp

Title: Treasurer

"PURCHASER"

WISPNET NC, LLC

By: Mark S. Elliott

Name: Mark S. Elliott

Title: President, Data Services

EXHIBIT A

EXCLUDED ASSETS

1. Interconnection Agreement between ALEC and Bellsouth in AL, MS, TN, KY, SC, FL, GA.

2. Interconnection Agreement between ALEC and Alltel in KY and GA.

3. Interconnection Agreement between ALEC and Verizon in FL.

4. Interconnection Agreement between ALEC and Sprint in FL.

5. Certificate of Public Convenience and Necessity in FL, GA, KY, TN, SC, MS, and AL.

6. Any and all claims between ALEC and Sprint before the Florida Public Service Commission (including without limitation the claim referred to in Docket No. 020099-TP) or the Georgia Public Service Commission.

EXHIBIT B

ALEC ASSETS

(See attached.)

EXHIBIT B

ALEC ASSETS

1. Domain name ALEC.NET
2. (See attached.)

EXHIBIT C

OTHER LIABILITIES

None.