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BEFORE THE PUBLIC UTILITIES COMMISSION

STATE OF COLORADO

Docket No. 05A-304T

IN THE MATTER OF THE APPLICATION OF MOBILEPRO CORP AND AMERICAN
FIBER NETWORK, INC FOR AUTHORITY TO TRANSFER CONTROL OF AN
AUTHORIZED CARRIER.

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (Stipulation) is entered into by and between
Staff of the Colorado Public Utilities Commission (Staff) and Mobilepro Corp. (Mobilepro)
(Staff and Mobilepro collectively, Parties, and individually, Party).

INTRODUCTION AND BACKGROUND

1. Mobilepro is a corporation incorporated in Delaware, with its principal office located in Bethesda, Maryland.
2. On July 15, 2005, Mobilepro and American Fiber Network, Inc. (AFN) initiated this Docket by filing an Application for Authority to Transfer Control of AFN to Mobilepro (Application). AFN holds a Certificate of Public Convenience and Necessity (CPCN) that was received by transfer in Decision No. C04-1140, Docket No. 04A-438T. AFN has an effective tariff on file with the Colorado Public Utilities Commission (Commission). Mobilepro does not possess any authority issued by the Commission to provide regulated telecommunications services in Colorado. Pursuant to the Application, Mobilepro has entered into an agreement with AFN through which AFN will merge with and into AFN Acquisition Corp., a newly created,

wholly-owned subsidiary of Mobilepro. Simultaneously, AFN Acquisition Corp. will change its name to American Fiber Network, Inc., which will be the surviving corporation. As a result of these transactions, AFN will become a wholly-owned subsidiary of Mobilepro, with AFN as the operating company and Mobilepro as the holding company.

3. Staff timely filed its Notice of Intervention on September 9, 2005. Staff is the only intervenor in this docket.

4. The Parties now stipulate and agree that the Commission should approve the Application on the terms set forth in this Stipulation.

TERMS OF STIPULATION AND SETTLEMENT

5. Pursuant to Section 40-15-503.5, C.R.S., Mobilepro shall maintain a letter of credit (LOC) for a period of three (3) years from the date its application to transfer control to provide regulated telecommunications service currently held by AFN in this Docket is approved by the Commission. Within ten days of Commission approval of the transfer of control of AFN to Mobilepro, Mobilepro shall separately file in this docket an original and three copies of a verified statement, signed by an officer of Mobilepro, stating the effective date of the LOC, the amount of the LOC that has been issued and the term of the LOC. Mobilepro shall attach the original LOC to the verified statement. The LOC shall be issued to AFN with the Commission as the obligee. All terms and conditions of this Stipulation shall apply jointly to Mobilepro and AFN.

6. Initially, the LOC shall be in the amount of fifty thousand dollars (\$50,000), which will be the minimum amount required for the duration of the LOC. The formula used to calculate the LOC is attached to this Stipulation as Exhibit A and incorporated herein.

7. The issuer of the LOC shall be a State or Federally certified financial institution in good standing.

8. Within thirty (30) days of the date the number of AFN's revenue producing lines¹ reaches one thousand (1,000) for the first time, Mobilepro shall recalculate the amount of the LOC that will be required and shall file a report with the Commission that clearly shows the number of revenue producing lines and the recalculated amount of the LOC that will be required, using the same formula that was the basis for the initial amount of the LOC, and which is attached as Exhibit A. Within thirty (30) days after the thirty-day report period has expired, Mobilepro shall file in this matter an original and three copies of a verified statement, signed by an officer of Mobilepro, stating the effective date of the LOC(s), the amount of the LOC(s) that has been issued and the term of the LOC(s). Mobilepro shall attach the original LOC document to the verified statement. It is understood that Mobilepro may justify the increased secured obligation by either a new LOC for the incremental amount or a substitution of the initial LOC by a new LOC in the full amount of the recalculated financial obligation. If Mobilepro chooses to have one single LOC issued for the recalculated obligation, the Commission will exchange the LOC on file with the Commission upon receipt of the original LOC for the recalculated amount.

9. Beginning in the year that Mobilepro obtains control of AFN's regulated telecommunications services, Mobilepro shall file a report with the Commission no later than December 31 of each year that the LOC is required. The report shall include the total number of revenue producing lines for the six (6) months preceding the date of the report, any change in the

¹ The term "revenue producing lines" shall mean lines that have been activated and for which customers are being billed. In the event Mobilepro sells systems that serve multiple lines, the calculation of "revenue producing lines" or the equivalent shall be made pursuant to Federal Communication Commission Form 477, "Instructions for the Local Competition and Broadband Reporting Form."

number of revenue producing lines for the six (6) months preceding the date of the report, the amount of the existing LOC, and any recalculation of the amount of the LOC that may be required.

10. By no later than August 31 of each year in which Mobilepro is required to post a LOC with the Commission pursuant to the terms of this Stipulation, Mobilepro shall file in this matter an original and three copies of a verified statement signed by an officer of Mobilepro confirming that the LOC on file with the Commission reflects the correct amount pursuant to the terms of this Stipulation.

11. An increase in the amount of the LOC will not be required unless the recalculation exceeds twenty percent (20%) of the amount of the existing LOC.

12. In the event of a default, the monies from the LOC shall be disbursed as set forth in this paragraph. Disbursement shall be made on a percentage basis, as set forth in Exhibit A. Disbursement of the LOC shall be made as described below:

a. To funds mandated by the Commission and Colorado statute, including the Colorado High Cost Support Mechanism, the Low Income Telephone Assistance Program, the Fixed Utilities Fund, 9-1-1, and the Telecommunications Relay Service.

b. To wholesale telecommunications provider(s), specifically for services provided to AFN for which payment has not yet been received on undisputed amounts; and for the wholesale telecommunications provider's costs of providing notice to customers if AFN fails to do so due to AFN's discontinuance of providing service, after verification of those costs by Staff.

c. To refund customer deposits and prepayments for telecommunications services not yet received in the event that AFN discontinues service to its customers.

d. Upon attestation by an officer of AFN that all refunds owed to customers for payment for services not yet received has been rendered and the disbursement of the funds to all other parties has been completed, the Commission shall disburse to Mobilepro any remaining proceeds from the LOC up to the amount of the refunds AFN issued to customers.

e. For Commission-incurred costs for items including, but not limited to, notices mailed by the Commission or the designated default provider if AFN discontinues service and fails to mail notice to customers, as required by 4 CCR 723-25-7.4 through 8; any Commission-incurred costs associated with the transitioning of customers to another provider; and any Commission-incurred bankruptcy court costs.

13. At any time any portion of the LOC is disbursed, Mobilepro shall obtain an addition to the current LOC for the amount required based on the formula set forth in Exhibit A.

14. Mobilepro and AFN shall be considered in default of the LOC in the following circumstances:

a. Untimely (*i.e.*, late by more than thirty (30) days) remittance or failure to remit payments to statutory funds by AFN (including the Colorado High Cost Support Mechanism, the Low Income Telephone Assistance Program, the Fixed Utilities Fund, 9-1-1, and the Telecommunications Relay Service); untimely remittance or failure to submit undisputed payments to wholesale providers; untimely payment or failure to pay any refunds, credits or deposits owed to customers; and

b. Untimely filing or failure by AFN to file Commission-required reports including, but not limited to: annual reports; line count report when the number of revenue-producing lines exceeds one thousand (1,000) for the first time; verified annual

statements of line counts and LOC amounts; verified statements of LOC renewal or modification; and violation of any Commission rules.

15. Occurrence of any of the events described in Paragraph 14 above shall be cause for Staff to request that the Commission issue an order to show cause to determine if the LOC is in default, if payment should be made to the beneficiary and disbursed as set forth in Paragraph 12 above, and whether the Commission should take action against AFN's CPCN and LOR.

16. Mobilepro and AFN agree that they will not discontinue service to AFN's customers for any reason unless the Commission has granted an application by AFN to discontinue pursuant to 4 CCR 723-25-7 (Rule 7). For so long as Mobilepro is obligated to provide the LOC, in the event that AFN files an application pursuant to Rule 7, AFN shall file with the Commission, and serve a copy on Staff, the following: (a) the number of business and residential lines affected by such discontinuance; (b) a customer list including the name, address and telephone number of each customer; (c) the amount of any refund due to each individual customer for payment of service not received by the customer; and (d) the identity of all underlying providers supporting the goods and/or services affected by such discontinuance.

17. Mobilepro expressly acknowledges that, in accordance with Section 40-5-105, C.R.S. (2004), as amended, it cannot sell, assign, or otherwise transfer its Colorado assets that are used in the provision of regulated telecommunications services, including, without limitation, Billing Account Numbers, customers, Interconnection Agreements, and its CPCN or LOR, without first having obtained Commission approval.

18. Mobilepro shall notify Staff of AFN's intent to enter into any marketing, customer service, or customer procurement agreements with any third party(ies) prior to entering

into any such agreements, as follows: if the third party is an individual (*i.e.*, natural person) over whom Mobilepro exercises substantial oversight, Mobilepro shall provide seven (7) days notice; in all other circumstances Mobilepro shall provide thirty (30) days notice.

19. Mobilepro shall file a report with the Commission in writing within ten (10) calendar days of any of the following events:

- a. Assessment of civil penalties on it or any of its affiliates by any court or regulatory body;
- b. Assessment of criminal penalties on it or any of its affiliates by any court or regulatory body;
- c. Injunctive relief awarded by any court or regulatory body against it or any affiliates;
- d. Any corrective action taken by any court or regulatory body against it or any of its affiliates;
- e. Any refund by Mobilepro or any of its affiliates of more than one hundred dollars (\$100) in any individual case, or any refund of two hundred fifty dollars (\$250) or more to any class of customers awarded by any court or regulatory body;
- f. Reparations by Mobilepro or any of its affiliates to any party awarded by any court or regulatory body;
- g. Initiation of a show cause proceeding by any court or regulatory body against Mobilepro or any of its affiliates;
- h. Initiation of disciplinary proceedings against Mobilepro or any of its affiliates by any court or regulatory body, including proceedings to limit or to place restrictions on any authority to operate;

- i. Refusal to grant authority to operate or provide a service by any court or regulatory body to Mobilepro or any of its affiliates;
- j. Revocation of authority of Mobilepro or any of its affiliates to operate or to provide a service by any court or regulatory body;
- k. Voluntary surrender by Mobilepro or any of its affiliates of any certificate or authority to operate in lieu of any action by a court or regulatory body; or
- l. Any combination of the foregoing sanctions, penalties, corrective actions, or other proceedings concerning Mobilepro or any of its affiliates.

20. If Mobilepro fails to perform any of the obligations set forth in this Stipulation including, but not limited to, failing to obtain and maintain a LOC according to the terms outlined in this Stipulation and failing to timely report to the Commission any events set forth in Paragraph 19 above, Staff shall consider Mobilepro to have breached this Stipulation. In that event, Staff may request that the Commission issue an order to show cause to determine whether the Commission should take action against AFN's CPCN and LOR.

GENERAL SETTLEMENT TERMS AND CONDITIONS

21. This Stipulation is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Stipulation. Furthermore, this Stipulation does not constitute agreement, by any Party, that any principle or methodology contained within this Stipulation may be applied to any situation other than the above-captioned cases. No precedential effect or other significance, except as may be necessary to enforce this Stipulation or a Commission order

concerning the Stipulation, shall attach to any principle or methodology contained in the Stipulation.

22. This Stipulation shall not become effective until the Commission issues a final order approving the Stipulation, which order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to the Parties hereto. In the event the Commission modifies this Stipulation in a manner unacceptable to either Party, that Party shall have the right to withdraw from this Stipulation and proceed to hearing on some or all of the issues that may be appropriately raised by that Party in these consolidated Dockets under a new procedural schedule. The withdrawing Party shall notify the Commission and the other Party to this Stipulation in writing within ten (10) days of the date of the Commission order that the Party is withdrawing from the Stipulation (Notice). A Party who properly serves a Notice shall have and be entitled to exercise all rights the Party would have had in the absence of the Party's agreeing to this Stipulation.

23. In the event this Stipulation is not approved, or is approved with conditions that are unacceptable to any Party who subsequently withdraws, the negotiations or discussions undertaken in conjunction with the Stipulation shall not be admissible into evidence in this or any other proceeding. Moreover, in such an event, except as may be specifically provided for herein, neither anything said, admitted or acknowledged in the negotiations leading up to the execution of this Stipulation, nor the settlement terms and conditions contained herein, nor the Stipulation itself may be used in this or any other administrative or court proceeding by any of the Parties hereto, or otherwise.

24. The Parties state that they have reached this Stipulation by means of a negotiated process that is in the public interest, and that the results reflected in this

Stipulation are just, reasonable, and in the public interest. Each Party pledges its support of this Stipulation and urges the Commission to approve same, without modification.

25. Except as otherwise specifically agreed in this Stipulation, nothing contained herein shall be deemed as constituting either a settled practice or precedent for the purposes of any other proceeding, and by entering into this Stipulation, no Party shall be deemed to have agreed to any specific principles of ratemaking. The Parties expressly reserve the right to advocate positions different from those stated in this Stipulation in any proceeding other than one necessary to obtain approval of, or to implement, this Stipulation or its terms and conditions. Nothing in this Stipulation shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Stipulation.

26. This Stipulation may be executed in separate counterparts, including facsimile. The counterparts taken together shall constitute the Stipulation and Settlement Agreement.

27. The signatories represent that the signatories to this Stipulation have full authority to bind their respective Parties to the terms of this Stipulation.

DATED this 18th day of November 2005.

FOR MOBILEPRO CORP.:

By: 

Geoffrey B. Amend
General Counsel & Secretary
6701 Democracy Blvd., Suite 202
Bethesda, MD 20817
Telephone: (301) 315-9040

APPROVED AS TO FORM:

By: _____

ATTORNEY
FIRM
Address
Address
Telephone:

**FOR STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION:**

By: _____

Gerald Enright
Rate/Financial Analyst IV
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By: _____

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DATED this 21st day of November 2005.

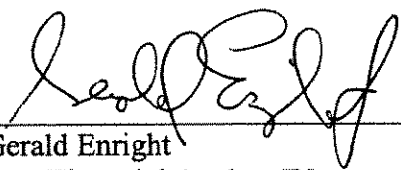
FOR MOBILEPRO CORP.:

By: _____
Name
Address
Address
Telephone: (XXX) YYY-ZZZZ

APPROVED AS TO FORM:

By: _____
ATTORNEY
FIRM
Address
Address
Telephone:

**FOR STAFF OF THE COLORADO
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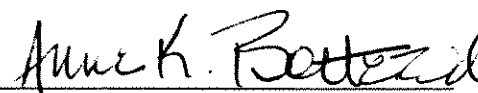
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EXHIBIT A
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Estimated Number of Access Lines: 500

Average Revenue per access line per month: \$ 25.00 Monthly Revenue per access line

Fixed Utilities Fund (FUF): 1.466% of Intrastate revenues

911 Fund: \$0.50 per line per month

Colorado High Cost Support Mechanism (CHCSM): 2.9% of revenues

Low Income Fund: \$0.07 per line per month

TRS Relay Fund: \$0.06 per line per month

PUC Administrative Costs- In the event CLEC does not perform customer transition obligations, calculated at \$1.84 per customer.

Prepayments- assume each customer prepays one month of service((\$25X1)X500 customers)

Customer deposits- assume 5% of retail customers will need to place a 2 month deposit of \$50

Wholesale Supplier Obligation is to cover payment obligations if a Provider curtails and or discontinues service and the Commission orders the underlying wholesale provider to continue service until customers are transitioned to other providers. It is calculated as the product of two months of retail service (\$50) and the number of lines provided by the wholesale provider(s).

Number of Lines:	500	<u>% of Total</u>	
Annual Revenues:	\$ 150,000		
FUF	2199	4%	
911	3000	6%	
CHCSM	4350	9%	
Low Income	420	1%	
TRS Fund	360	1%	
PUC Administrative Costs	921	2%	
Customer deposits	1250	3%	
Customer Prepayments	12500	25%	
Wholesale Supplier Obligation	<u>25000</u>	<u>50%</u>	
Total Deposit/Bond Requirement	\$ 50,000	100%	