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PUBLIC UTILITIES COMMISSION

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BEFORE THE PUBLIC UTILITIES COMMISSION

STATE OF COLORADO

Docket No. 03A-012T

IN THE MATTER OF THE APPLICATION OF ALTICOMM, INC. FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL
EXCHANGE TELECOMMUNICATIONS SERVICES

DFA
1-7

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement ("Stipulation" or "Agreement") is entered into by and between Staff of the Colorado Public Utilities Commission ("Staff") and Alticom, Inc. ("Alticom" or the "Company") (collectively, the "Parties").

I. INTRODUCTION

This docket commenced when, on January 10, 2003, Alticom filed its Application for a Certificate of Public Convenience and Necessity ("CPCN") to Provide Local Exchange Telecommunications Services. On its CPCN application, Alticom responded in the negative to question 7(B), which asked, "Within the last five years, has any court or regulatory body entered any adverse decision regarding the applicant's provision of local exchange services or other controlled telecommunications services that resulted in any of the penalties or sanctions described in Rule 4 CCR 723-25-4.1.8?"¹

DEC 18 2003

¹ 4 CCR 723-25-4.1.8 requires identification of any adverse decision entered by any court or regulatory body regarding an applicant's provision of local exchange telecommunications services that resulted in: (a) assessment of civil penalties; (b) assessment of criminal penalties; (c) injunctive relief, (d) corrective action; (e) reparations; (f) initiation of a show cause proceeding; (g) initiation of a disciplinary action including, but not limited to, proceedings to limit or to place restrictions on any authority to operate, any CPCN, or any service offered; (h) refusal to grant authority to operate or to provide a service; (i) decertification or revocation of authority to operate or to provide a service; or (j) any combination of the foregoing.

On February 13, 2003, the Colorado Public Utilities Commission (“CPUC” or “Commission”) mailed Decision No. C03-0167, rejecting AltiComm’s application. As grounds for rejection, the Commission stated that it had obtained information that on its face would question the veracity and completeness of the information obtained in AltiComm’s application. The Commission stated that it understood that specific corrective action was taken in Minnesota against AltiComm, formerly known as Eastern Telephone, Inc. (“Eastern”), in Docket No. P-6164/C-02-1383, Order Directing Compliance with Filed Agreement as well as by the Iowa Utilities Board in Docket No. FCU-02-17, and that these actions should have been disclosed in its CPCN application.

On March 14, 2003, AltiComm filed an application for Rehearing, Reargument, or Reconsideration (“RRR”). Commission Decision No. C03-0329 was mailed on April 1, 2003, denying AltiComm’s application for RRR. However, the Commission noted that AltiComm was entitled to its day in court, through an evidentiary hearing, to fully explain its reasons for the information contained in the applications, and stated that an evidentiary hearing was also necessary to explore other factual representations made by AltiComm in its application for RRR.

A prehearing conference was held on April 30, 2003. AltiComm filed its Direct Testimony on May 28, 2003. Staff filed its Answer Testimony on June 13, 2003. Hearing was held on June 19, 2003. Staff filed its Statement of Position on August 18, 2003, and AltiComm filed its Statement of Position on August 27, 2003.

Commission Decision No. C03-1116, Order Granting Application ("Order"), was mailed on September 30, 2003. This Order grants Alticom a CPCN contingent on the posting of a bond or other security and directs Staff and Alticom to work together to negotiate the terms of a bond, including the amount, the length of time the bond must be held, a definition of the situation(s) that would cause the bond to come due, and how the money would be used. This Stipulation results from the Commission's Order.

II. TERMS OF STIPULATION AND SETTLEMENT

1. Within 30 days following the Commission's approval of this Stipulation, Alticom shall: a) post a surety bond with the Commission which shall remain in place for a period of three years from the date of the Commission's approval of this Stipulation; and b) file with the Commission a verified statement, signed by an officer of Alticom, that identifies the amount of the bond that has been issued and the term of the bond. Proof of issuance, term, and the amount of the bond from the issuer shall be attached to the verified statement.

2. Initially, the bond shall be in the amount of \$25,000, which will be the minimum amount required for the duration of the bond. The formula used to calculate the bond is attached to this Stipulation as Exhibit A and incorporated herein. Alticom expressly acknowledges that it will not require customer deposits or other advance payments for initiation of service and that it will not include a deposit or other advance payment section for initiation of service in its tariff. However, if a customer is requesting service

beyond AltiComm's standard installation, AltiComm may request an advance payment from the customer for the non-standard service.

3. Within 30 days of the date the number of revenue producing lines² reaches 1000 for the first time, AltiComm shall recalculate the amount of the bond that will be required and file a report with the Commission that clearly shows the number of revenue-producing lines and the recalculated amount of the bond that will be required, using the same formula that was the basis for the initial amount of the bond, and which is attached as Exhibit A. Within 30 days after the 30-day report period has expired, an officer of AltiComm shall file with the Commission a verified statement that the bond has been increased to the required amount and that identifies the new term of the bond. Proof of issuance, term, and the amount of the bound from the issuer shall be attached to the verified statement.

² The term "revenue producing lines" shall mean lines that have been activated and for which customers are being billed.

4. AltiComm shall file a report with the Commission by no later than July 31 of each year that financial assurance is required. The report shall include the total number of revenue producing lines for the first six months of the current calendar year and any change in the number of revenue-producing lines for the previous six-month period, the amount of the existing bond, and any recalculation of the amount of the bond that may be required. By no later than August 31 of each year, an officer of AltiComm shall file with the Commission a verified statement confirming that the bond has been issued for the required amount and include the new term of the bond. Proof of issuance, term, and the amount of the bond from the issuer shall be attached to the verified statement.

5. An increase in the amount of the bond will not be required unless the recalculation exceeds 20% or more of the amount of the existing bond.

6. At any time any portion of the bond is dispersed, AltiComm shall obtain an addition to the current bond for the amount required based on the formula set forth in Exhibit A.

7. The beneficiary of the bond shall be the Colorado Public Utilities Commission. The monies from the bond will be disbursed as set forth in this paragraph. Disbursement shall be made on a percentage bases, as set forth in Exhibit A. Disbursement of the bond shall be made as described below:

a. To Commission and statutorily mandated funds, 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. Upon attestation by an officer of AltiComm 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 AltiComm any remaining proceeds from the bond up to the amount of the refunds AltiComm issued to customers.

c. Commission-incurred costs for items including, but not limited to, notices mailed by the Commission or the designated default provider if AltiComm discontinues service and fails to mail notice to customers, as required by 4 Code of Colorado Regulation 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.

8. AltiComm shall be considered in default of the bond in the following circumstances:

a. Untimely remittance (late more than 30 days) or failure to remit payments to statutory funds; and untimely payment or failure to pay any refunds, credits or deposits owed to customers; and

b. Untimely filing or failure to file Commission-required reports including, but not limited to: annual reports; line count report when the number of revenue-producing lines exceeds 1000 for the first time; verified annual statements of line counts and bond amounts; verified statements of bond renewal or modification; and violation of any Commission rules.

9. Occurrence of any of the events described in paragraph 8 shall be cause for Staff to initiate an expedited hearing before the Commission to determine if AltiComm's bond is in default, if payment(s) should be made to the beneficiaries, and whether the Commission should take action against AltiComm's CPCN.

10. For so long as AltiComm is obligated to provide the bond, in the event that AltiComm determines it will discontinue providing service to customers for any reason other than customer choice, it shall file with the Commission, and serve a copy on Staff, the following: the number of business and residential lines affected by such discontinuance; a customer list including the name, address and telephone number of each customer; the amount of any refund due to each individual customer for payment of service not received by the customer; and the identity of all underlying providers supporting the goods and/or services affected by such discontinuance.

11. The issuer of the bond shall be rated "Secure" by A. M. Best Company, Inc.

12. AltiComm expressly acknowledges that it cannot sell, assign or otherwise transfer its Colorado assets including, without limitation, Billing Account Numbers, Interconnection Agreements and a CPCN, without first having obtained Commission approval pursuant to § 40-15-105, C.R.S.

II. GENERAL SETTLEMENT TERMS AND CONDITIONS

13. This Agreement 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.

14. This Stipulation shall not become effective until the issuance of a final Commission 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 any Party hereto, 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 this docket under a new procedural schedule. The withdrawing Party shall notify the Commission, and the other Party to this Stipulation, in writing within thirty (30) days of the date of the Commission order that the Party is withdrawing from the Stipulation (such notice being referred to as the "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. Hearing shall be scheduled on an expedited basis, as soon as practicable.

15. In the event that 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.

16. 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 hereto pledges its support of this Stipulation and urges the Commission to approve same, without modification.

17. Except as otherwise specifically agreed upon in this Stipulation, nothing contained herein shall be deemed as constituting a settled practice or of precedential value 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.

18. This Stipulation may be executed in separate counterparts, including facsimile. The counterparts taken together shall constitute the Stipulation and Settlement Stipulation. The parties represent that the signatories to the Stipulation have full authority to bind their respective parties to the terms of the Stipulation.

DATED ^{December} ~~November~~ 17, 2003.

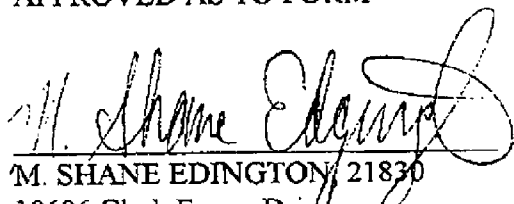
For AltComm, Inc.

For Staff of the Commission

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APPROVED AS TO FORM



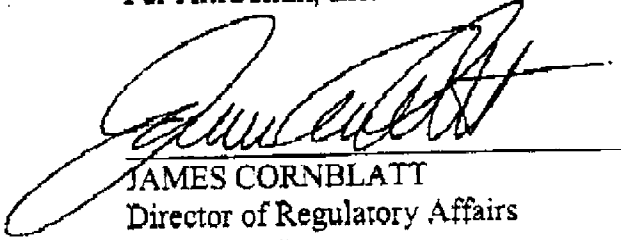
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DATED December ____, 2003.

For AltComm, Inc.

For Staff of the Commission



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DATED December 17th, 2003.

For AltiComm, Inc.

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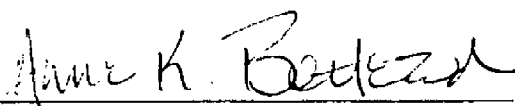

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Exhibit A
Stipulation and Settlement Agreement
Docket Number 03A-012T

Number of Customers: 500

Average Revenue per customer per month:

\$ 25.00 Monthly Revenue per customer

Fixed Utilities Fund: 1.466% of Intrastate revenues

911 Fund: \$0.50 per line per month

CHCSM: 2% of revenues

Low Income Fund: \$.10 per line per month

TRS Relay Fund: \$.10 per line per month

PUC Administrative Costs- In the event CLEC does not perform customer transition obligations

Prepayments- assume each customer prepays one month of service

<u>Option 1-A</u>	500	<u>% of Total</u>	
Annual Revenues:	\$ 150,000		
FUF		2199	9%
911		3000	12%
CHCSM		3000	12%
Low Income		600	2%
TRS Fund		600	2%
PUC Administrative Costs		3101	12%
Customer Prepayments		<u>12500</u>	50%
Total Deposit Option 1-A	\$ 25,000		100%