

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-09-SE-126
)	
Alpheus Communications, L.P.)	Acct. No. 201032100033
)	
)	FRN No. 0005004361

ORDER

Adopted: August 12, 2011

Released: August 12, 2011

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Alpheus Communications, L.P. (“Alpheus”). The Consent Decree terminates an investigation and cancels a Notice of Apparent Liability for Forfeiture (“*NAL*”)¹ issued by the Bureau against Alpheus for possible violations of Part 4 of the Commission’s rules regarding the reporting of network outages.²

2. The Bureau and Alpheus have negotiated the terms of the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree, which terminates the investigation and cancels the *NAL*.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Alpheus possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 503(b) of the Communications Act of 1934, as amended,³ and sections 0.111 and 0.311 of the Commission’s Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED** and the Notice of Apparent Liability for Forfeiture issued by the Bureau against Alpheus on July 6, 2010 **IS CANCELLED**.

¹ *Alpheus Communications, L.P.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 8993 (Enf. Bur. 2010) (“*NAL*”).

² 47 C.F.R. § 4.1 *et seq.*

³ 47 U.S.C. § 154(i), 503(b).

⁴ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Stephen W. Crawford, General Counsel and Senior Vice President, Alpheus Communications, L.P. 1301 Fannin St., 20th Floor, Houston, TX 77002 and Joshua Bobeck, Esq., counsel for Alpheus, Bingham McCutchen LLP, 2020 K Street NW, Washington, DC 20006-1806.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

**Before the
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In the Matter of)	File No. EB-09-SE-126
)	Acct. No. 201032100033
Alpheus Communications, LP)	FRN No. 0005004361
)	

CONSENT DECREE

The Enforcement Bureau (“Bureau”) and Alpheus Communications, L.P. (“Alpheus” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Alpheus violated Section 4.9(f) of the Commission’s Rules¹ by failing to file network outage reports by the compliance deadlines.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Alpheus” means Alpheus Communications, L.P. and its subsidiaries, affiliates, predecessors-in-interest and successors-in-interest.
 - (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) “Compliance Plan” means the program described in this Consent Decree at paragraph 8.
 - (g) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (h) “Investigation” means the investigation commenced by the Bureau’s September 10, 2009 Letter of Inquiry² regarding whether Alpheus violated Section 4.9(f) of the Rules regarding the reporting of network outages.

¹ 47 C.F.R. § 4.9(f).

² See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Stephen W. Crawford, Esq., General Counsel and Senior Vice President, Alpheus Communications, LP (September 10, 2009) (“LOI”).

- (i) “NAL” means the Notice of Apparent Liability for Forfeiture issued by the Bureau against Alpheus Communications on July 6, 2010.
- (j) “Parties” means Alpheus and the Bureau, and each a “Party.”
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Under Section 4.9(f) of the Rules, wireline service providers must report to the Commission an outage of at least 30 minutes duration that: (1) potentially affects at least 900,000 user minutes³ of either telephony or paging; (2) affects at least 1,350 DS3 minutes;⁴ (3) potentially affects any special offices and facilities;⁵ or (4) potentially affects a 911 special facility.⁶ Upon discovery of such an outage on facilities that they own, operate, lease, or otherwise utilize, wireline service providers must file an electronic Notification within 120 minutes, an Initial Communications Outage Report within 72 hours, and a Final Communications Outage Report within 30 days.⁷

3. On September 10, 2009, the Bureau issued a Letter of Inquiry (“LOI”) to Alpheus.⁸ The LOI directed Alpheus, among other things, to submit a sworn written response to a series of questions relating to Alpheus’s compliance with the Commission’s network outage reporting rules. Alpheus responded to the LOI on October 9, 2009.⁹ On July 6, 2010, the Bureau released the NAL proposing that Alpheus be held liable for a monetary forfeiture of sixty thousand dollars (\$60,000) under section 503(b)(1)(B) of the Act, and ordered the Company either to pay the proposed forfeiture or file a written response within thirty (30) days of the release date stating why the proposed forfeiture should be reduced or canceled.¹⁰ Alpheus and the Bureau subsequently entered into settlement discussions.

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

³ “User minutes” are defined as “assigned telephone number minutes ... for telephony and for those paging networks in which each individual user is assigned a telephone number” or “the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of end users potentially affected by the outage for all other forms of communication.” 47 C.F.R. § 4.7(e).

⁴ “DS3 minutes” are defined as “the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of previously operating DS3 circuits that were affected by the outage.” 47 C.F.R. § 4.7(d).

⁵ “Special offices and facilities” include major military installations, key government facilities, nuclear power plants, and certain airports. 47 C.F.R. § 4.5(b)-(d).

⁶ See 47 C.F.R. § 4.5(e).

⁷ See 47 C.F.R. § 4.9(f).

⁸ See LOI, *supra* n. 2.

⁹ Letter from Joshua M. Bobeck, Esq., Counsel for Alpheus Communications, LP, to Linda M. Nagel, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (October 9, 2009) (“LOI Response”).

¹⁰ *Alpheus Communications, L.P.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 8993 (Enf. Bur. 2010).

5. **Jurisdiction.** Alpheus agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.
6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission Order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission Order.
7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation and to cancel the NAL. In consideration for the termination of the Investigation and cancellation of the NAL, Alpheus agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, the Bureau will not use the facts obtained in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Alpheus concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Alpheus with respect to Alpheus's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier or hold Commission authorizations.
8. **Compliance Plan.** For purposes of settling the matters set forth herein, Alpheus agrees that it shall develop and implement within thirty (30) calendar days a Compliance Plan related to Alpheus's future compliance with the Act, the Rules, and the Commission's Orders. The Plan will include, at a minimum, the following components:
- (a) **Compliance Officer.** Alpheus shall designate an officer of the Company to serve as the Compliance Officer for FCC outage reporting, oversee the Compliance Manual and Compliance Training, both of which are described below, and ensure compliance with the outage reporting requirements in the Rules.
 - (b) **Compliance Manual.** Alpheus shall develop an FCC outage reporting compliance manual addressing FCC network outage reporting requirements, as detailed below, and distribute to all employees who are responsible for analyzing technical information regarding Alpheus's network outages, entering information into any Alpheus database(s) and/or record(s) that form the basis of Alpheus's reporting of network outages to the Commission, and compiling and/or submitting Alpheus's outage reports to the Commission.
 - i. Alpheus's Compliance Manual shall address, at a minimum, the FCC's Rules governing the reporting of network outages, the information and calculations necessary to determine whether an outage is reportable under the FCC's Rules, and the time periods during which notifications and reports of reportable outages must be submitted to the FCC. Alpheus's Compliance Manual shall also address the methods and procedures adopted by Alpheus to identify and report those network outages that satisfy the FCC's reporting criteria in order to ensure compliance with the FCC's outage reporting Rules. The Compliance Manual shall also include information on the potential internal and regulatory

- consequences of failing to comply with Alpheus's methods and procedures and/or the FCC's outage reporting requirements.
- ii. Alpheus shall update and enhance the foregoing Compliance Manual as appropriate and necessary to ensure that it remains current at all times on all the FCC's outage reporting requirements.
- (c) **Compliance Training Program.** Alpheus shall establish and implement an FCC outage reporting training program addressing FCC network outage reporting requirements, as detailed below, for all employees who are responsible for analyzing technical information regarding Alpheus's network outages, entering information into any Alpheus database(s) and/or record(s) that form the basis of Alpheus's reporting of network outages to the Commission, and compiling and/or submitting Alpheus's outage reports to the Commission.¹¹ Alpheus's Training Program shall cover the topics outlined in the Compliance Manual set forth in section (b) above.
- i. Alpheus shall provide the foregoing outage reporting training within sixty (60) calendar days of the Effective Date and will update the training at least annually for employees who are responsible for analyzing technical information regarding Alpheus's network outages, entering information into any Alpheus database(s) and/or record(s) that form the basis of Alpheus's reporting of network outages to the Commission, and compiling and/or submitting Alpheus's outage reports to the Commission. Alpheus will also provide training to new employees responsible for these activities within thirty (30) days of such person beginning employment or assuming such responsibilities.
- ii. Alpheus shall update and enhance the foregoing training as appropriate and necessary to ensure that it remains current at all times on all the FCC's outage reporting requirements.
- (d) **Outage Reporting.** Beginning sixty (60) days after the Effective Date and thereafter, Alpheus shall include in any NORS report filed with the Commission the date and time that Alpheus discovered the outage was reportable using the following two separate fields: (1) Date Outage Determined Reportable and (2) Local Time Outage Determined Reportable (24 hr clock (nnnn))
- (e) **Reporting Non-Compliance.** Alpheus shall report any non-compliance with section 4.9 of the Rules to the Bureau within fifteen (15) calendar days after the discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Alpheus has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Alpheus has taken or will take to prevent the recurrence of any such non-compliance, including the schedule on which such preventive action will be taken. All such reports of non-compliance shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445

¹¹ Under this provision, Alpheus will not be required to provide outage reporting compliance training to employees other than those whose responsibilities include one or more of the following duties analyzing technical information regarding Alpheus's network outages, entering information into Alpheus's database(s) and/or record(s) that form the basis of Alpheus's reporting of network outages to the Commission, and compiling and/or submitting Alpheus's outage reports to the Commission.

12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Ricardo Durham at Ricardo.Durham@fcc.gov, and Linda Nagel at Linda.Nagel@fcc.gov.

- (f) **Compliance Reports.** Alpheus will file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each compliance report shall include a compliance certificate from the Compliance Officer, as an agent and on behalf of Alpheus, stating that the Compliance Officer has personal knowledge that Alpheus has (i) established and implemented operating procedures intended to ensure compliance with this Consent Decree, the Act, the Rules and the Commission's Orders, together with an accompanying statement explaining the basis for the officer's compliance certification; (ii) has been utilizing those procedures since establishing and implementing the Compliance Plan; and (iii) is not aware of any instances of noncompliance, other than those set forth in paragraph 8(e) above. The certification shall be accompanied by a statement explaining the basis for the Compliance Officer's certification and must comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Alpheus, shall provide the Commission with a detailed explanation of: (i) any instances of noncompliance with this Consent Decree, the Act, or the Rules, (ii) the steps that Alpheus has taken or will take to remedy each instance of noncompliance and ensure future compliance, and (iii) the schedule on which proposed remedial actions will be taken. All compliance reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to Ricardo Durham at Ricardo.Durham@fcc.gov and Linda Nagel at Linda.Nagel@fcc.gov.
- (g) **Termination.** Unless stated otherwise, the provisions of this paragraph shall remain in effect for twenty-four (24) months from the Effective Date.

9. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against Alpheus or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Alpheus of the Act, the Rules, or Commission Orders.

10. **Voluntary Contribution.** Alpheus agrees to make a voluntary contribution to the United States Treasury in the amount of Fifty-Five Thousand Dollars (\$55,000) within thirty (30) calendar days after the Effective Date. Payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in

block number 24A (payment type code). Alpheus will also send electronic notification on the date said payment is made to Ricardo.Durham@fcc.gov and Linda.Nagel@fcc.gov.

11. **Waivers.** Alpheus waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or otherwise to challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. Alpheus shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Alpheus nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Alpheus shall waive any statutory right to a trial *de novo*. Alpheus hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

12. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

13. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Alpheus does not expressly consent) that provision will be superseded by such Commission rule or Order.

14. **Successors and Assigns.** Alpheus agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

15. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's rules and Orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Alpheus does not admit or deny noncompliance, violation or liability for violating the Act or the Rules in connection with the matters that are the subject of this Consent Decree.

16. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

17. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

18. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

19. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Stephen W. Crawford
General Counsel and Senior Vice President,
Mergers and Acquisitions
Alpheus Communications, L.P.

Date