

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

In the matter of
ASC Telecom, Inc. d/b/a Alternatel
Operator Service Provider Requirements
File No. EB-02-TC-136
NAL/Acct. No. 200232170006
FRN: 0004372835

ORDER

Adopted: March 11, 2004

Released: March 19, 2004

By the Commission:

1. In this Order, we adopt a Consent Decree terminating an investigation into possible violations by ASC Telecom, Inc. ("ASC"), d/b/a/ Alternatel, of Section 226 of the Communications Act of 1934, as amended (the "Act"), and the Commission's rules governing operator service providers.

2. The Commission and ASC have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by approving the Consent Decree and terminating the investigation.

4. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended, that the attached Consent Decree IS ADOPTED.

5. ASC shall make its voluntary contribution to the United States Treasury by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232170006 and FRN 0004372835.

1 47 U.S.C. §§ 226(b)(1)(A), (b)(1)(C)(i); 47 C.F.R. §§ 64.703(a)(1), (a)(3)(i), (a)(4).

2 See ASC Telecom, Inc. d/b/a/ Alternatel, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 18654 (2002).

3 47 U.S.C. §§ 154(i), 154(j), 503(b).

6. IT IS FURTHER ORDERED that the Commission investigation into the matter described herein is terminated.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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

In the Matter of
ASC Telecom, Inc. d/b/a/ Alternatel
Operator Service Provide Requirements
File No. EB-03-TC-136
NAL/Acct. No. 2002321700006
FRN: 0004372835

CONSENT DECREE

I. INTRODUCTION

1. The Federal Communications Commission (the "FCC" or the "Commission") and ASC Telecom, Inc. d/b/a Alternatel ("ASC"), by their authorized representative, hereby enter into this Consent Decree to resolve two investigations and a Notice of Apparent Liability ("NAL") (together, the "Investigations") by the Commission regarding non-compliance with the operator service provider ("OSP") requirements contained in Sections 226(b)(1)(A), (b)(1)(B), (b)(1)(C)(i), and Section 201(b) of the Communications Act of 1934, as amended (the "Act"), and Sections 64.703(a)(1), (a)(2), and (a)(3)(i) of the Commission's rules. The Investigations were undertaken pursuant to Sections 4(i) and 403 of the Act.

2. ASC provides operator services that can be accessed through aggregator telephones across the United States. Aggregator phones include phones in hotel and motel rooms, as well as payphones located in airports, train stations, shopping malls, gas stations, and other locations where they serve the public or transient users. ASC states that it provides operator

4 ASC is an indirect subsidiary of Sprint Corporation. See ASC's 2002 FCC Form 499-A Telecommunications Reporting Worksheet. ASC is located at 6200 Sprint Parkway, Overland Park, KS 66251.

The definitions of the term ASC and other defined terms are set forth in Section II of this decree.

5 ASC Telecom, Inc. d/b/a Alternatel, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 18654 (2002).

6 47 U.S.C. §§ 226(b)(1)(A), (b)(1)(B), (b)(1)(C)(i); §201(b); 47 C.F.R. §§ 64.703(a)(1), (a)(2), (a)(3)(i).

7 47 U.S.C. §§ 154(i), 403.

8 "Operator services" are defined by the Act and the Commission's rules as "any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than: (A) automatic completion with billing to the telephone from which the call originated; or (B) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer." 47 U.S.C. § 226(a)(7)(A)-(B); 47 C.F.R. §§ 64.708(i)(1)-(2). An "aggregator" is "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services." 47 U.S.C. § 226(a)(2); 47 C.F.R. §64.708(b).

services over its “Hospitality Platform,” which accommodates a number of customer choices regarding payment method, including FONCARD, collect, third party, other carriers’ calling cards and major credit cards. As an operator service provider, ASC is required for all operator services calls to identify itself audibly and distinctly at the beginning of each call (“branding”)<sup>9</sup>, before the consumer incurs any charge; to permit the consumer to terminate the call at no charge before it is connected; and to provide its rates to consumers upon request.<sup>10</sup>

3. On September 23, 2002, the Commission, following an investigation, issued the *NAL*. The *NAL* found that ASC had apparently violated the Act and the Commission’s rules regarding OSPs on certain toll free access codes.<sup>11</sup> Also on September 23, 2002, the Enforcement Bureau of the FCC issued a Letter of Inquiry regarding ASC’s provisioning of operator services.<sup>12</sup>

4. In the Investigations, and subsequent to the issuance of the *NAL*, ASC represented that at one time it had contracted to provide Operator Services to certain customers (“Contract Customers”) that owned or controlled Other Access Codes but that it voluntarily had severed these contractual relationships prior to gaining any knowledge on its part that the FCC had initiated the Investigations. ASC represents that it did not own any Other Access Codes before or after the *NAL* was issued.

5. Further, ASC represents that it did not develop any distinct branding or rate disclosure practices specific to handling calls placed through Other Access Codes and that the procedures set forth in ASC’s submissions to the Commission regarding branding and rate disclosure for OSP-assisted calls fully comply with applicable legal requirements. ASC further represents that there was no intent, purpose or scheme on its part to deceive or mislead customers through improper branding or rate disclosures.

## II. DEFINITIONS

6. For the Purposes of this Consent Decree, the following definitions shall apply:

(a) The “FCC” or the “Commission” means the Federal Communications Commission and all bureaus and offices of the Commission, including the Enforcement

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<sup>9</sup> “Branding” occurs when an OSP “identif[ies] [itself], audibly and distinctly, to the consumer.” 47 U.S.C. § 226(b)(1)(A); 47 C.F.R. § 64.703(a)(1). See also *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Notice of Proposed Rulemaking, 6 FCC Rcd 1448 (1991).

<sup>10</sup> 47 U.S.C. §§ 226(b)(1)(A), (b)(1)(B), (b)(1)(C)(i); 47 C.F.R. §§ 64.703(a)(1), (a)(2), (a)(3)(i). The FCC has interpreted the statute to permit branding to occur after the input of billing information if operator service providers use automated equipment that under certain circumstances transfers a call to another carrier. This ensures “that the consumer hears only the brand of the OSP who is actually handling the call.” *Policies and Rules Concerning Operator Service Providers*, CC Dkt. 90-313, Order on Reconsideration, 7 FCC Rcd 3882, ¶¶ 1, 5-9 (1992).

<sup>11</sup> “Access code” means “a sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence.” 47 U.S.C. § 226(a)(1); 47 C.F.R. § 64.708(a).

<sup>12</sup> See Letter from Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission to Richard Juhnke, Vice-President, Federal Regulatory Affairs, ASC Telecom, Inc., d/b/a Alternatel, September 23, 2002.

Bureau.

(b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.

(c) “ASC” or the “Company” means ASC Telecom, Inc., d/b/a Alternatel, and any affiliate, d/b/a, predecessor-in-interest, parent companies and any direct or indirect subsidiaries of such parent companies, or other affiliated companies or businesses, and their successors and assigns.

(d) “Parties” means ASC and the Federal Communications Commission.

(e) “OSPs” means providers of operator services, as defined by the Act and the Commission’s rules.<sup>13</sup>

(f) “Other Access Codes” means toll-free access codes that differ from 1-800-COLLECT (1-800-265-5328), 1-800-CALLATT (1-800-225-5288), or 1-800-OPERATOR (1-800-673-7286 (7)) by no more than one digit.

(g) “Adopting Order” means an Order of the Commission adopting the terms and conditions of this Consent Decree without change, addition or modification.

(h) “Effective Date” means the date on which the Commission adopts the Adopting Order.

(i) “Hospitality Platform” means the ASC/Sprint operator services platform designed and utilized to service primarily Aggregator phones.

(j) Notice of Apparent Liability (“NAL”) means the *NAL* adopted on September 23, 2002, *ASC Telecom, Inc., d/b/a/ Alternatel*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 18654 (2002).

### III. AGREEMENT

7. ASC represents and warrants that it is the properly named party to this Consent Decree and is solvent and has sufficient funds available to meet fully all financial and other obligations set forth herein. ASC further represents and warrants that it has caused this Consent Decree to be executed by its authorized representative, as a true act and deed, as of the date affixed next to said representative’s signature. Said representative and ASC respectively affirm and warrant that said representative is acting in his/her capacity and within his/her authority as a corporate officer of ASC, and on behalf of ASC and that by his/her signature said representative is binding ASC to the terms and conditions of this Consent Decree.

8. ASC agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

<sup>13</sup> See 47 U.S.C. § 226(a)(9); 47 C.F.R. § 64.708(l).

9. ASC will make a voluntary contribution to the United States Treasury in the amount of one hundred twenty-five thousand dollars (\$125,000.00) within 14 calendar days after the Commission Order adopting this Consent Decree becomes final. ASC must make this payment by check, wire transfer, or money order drawn to the order of the Federal Communications Commission, and the check, wire transfer, or money order should refer to "NAL Acct. No. 200232170006." If ASC makes this payment by check or money order, it must mail the check or money order to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482. If ASC makes this payment by wire transfer, it must wire such payment in accordance with Commission procedures for wire transfers.

10. For purposes of settling the matters set forth herein, ASC agrees to take the actions described below:

- (a) ASC will not knowingly provide, and will not enter into an agreement to knowingly provide, Operator Services on calls initiated over Other Access Codes.
- (b) ASC will require any agreement it enters into with other operator service providers to preclude such provider from delivering to ASC any calls initiated over Other Access Codes.
- (c) ASC agrees that it will institute the following "Compliance Plan" as set forth below, beginning no later than 30 days after the Effective Date:
  - (i) ASC will require each new employee hired to work as an operator to undergo training prior to processing operator service calls. For purposes of this section 10(c), the term "operator" shall mean an operator processing calls via tollfree access codes over ASC's Hospitality Platform. Such training will include materials emphasizing the need for complete and accurate branding, rate disclosure, and lawful processing of operator service calls.
  - (ii) ASC will provide, on an annual basis, refresher training to its operators. Such refresher training shall review the need for complete and accurate branding, rate disclosure, and lawful processing of calls and to provide ongoing training as necessary.
  - (iii) ASC will on a biannual basis, audit the performance of the operators, and such audit shall include real-time monitoring of actual calls. The audit results for individual operators may be used by ASC to take corrective or disciplinary action as ASC, in its sole judgment, deems appropriate.
  - (iv) ASC will require those employees supervising the operators to supervise in a manner that will promote the provision of accurate and lawful operator services.

Nothing in this Compliance Plan shall alter ASC's obligation to otherwise comply with the Act and with the Commission's rules and orders.

11. Within 90 days from the Effective Date, ASC will provide a formal report to the Bureau of its compliance with this Consent Decree, including progress in implementing its Compliance Program. ASC also agrees to send to the Bureau, upon 30 days after receiving a written request from the Bureau, a report updating its compliance efforts with regard to this Consent Decree.

12. In express reliance on the covenants and representations contained herein, the Commission agrees to terminate the Investigations concerning compliance with Sections 226(b)(1)(A), (b)(1)(B), (b)(1)(C)(i) and Section 201(b) of the Act, and Sections 64.703(a)(1), (a)(2) and (a)(3)(i) of the Commission's rules and resolve the Investigations, including the *NAL*. By this Consent Decree, the Notice of Apparent Liability is cancelled, the apparent findings in the *NAL* are withdrawn, and the *NAL* has no legal force or effect.

13. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigations. The Commission agrees that, in the absence of new material evidence related to this matter, it will not use the facts developed in the Investigations or the existence of this Consent Decree, on its own motion, to initiate any new proceedings, formal or informal, or take any actions, including any other enforcement action, against ASC, nor will the Commission, on its own motion, seek any administrative or other penalties from ASC based on these Investigations. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any complaint that may be filed pursuant to Section 208 of the Act, 47 U.S.C. § 208, and to take any action in response to such complaint.

14. ASC waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without change, addition, or modification.

15. ASC's decision to enter into this Consent Decree is expressly contingent upon the issuance of an Adopting Order by the Commission that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, or modification.

16. ASC represents and warrants that it shall not effect any change in its form of doing business or its organizational identity or participate directly or indirectly in any activity to form a separate entity or corporation that engages in acts prohibited in this Consent Decree or for any other purpose which would otherwise circumvent any part of this Consent Decree or the obligations of this Consent Decree.

17. In the event that this Consent Decree 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.

18. The Parties also agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission, where compliance with the provision would result in a violation of the subsequent rule or order, that provision will be superseded by such Commission rule or order.

19. By this Consent Decree, ASC does not waive or alter its right to assert and seek

protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information. The status of materials prepared for, reviews made and discussions held in the preparation for and implementation of ASC's compliance efforts under this Consent Decree, which would otherwise be privileged or confidential, are not altered by the execution or implementation of the terms of this Consent Decree, and no waiver of such privileges is made by this Consent Decree. When the Commission is legally able to return any documents submitted by ASC as part of the Investigations pursuant to a request for confidential treatment, the Commission agrees that upon ASC's request, it will return such documents within 30 days of such request.

20. 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 ASC nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and ASC and the Commission will waive any statutory right to a trial de novo with respect to the issuance of the Adopting Order and shall consent to a judgment incorporating the terms of this Consent Decree.

21. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding regarding any compliance or noncompliance with the requirements of the Act and the Rules. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, ASC does not admit any wrongdoing, non-compliance, or violation of the Act or the Commission rules in connection with the matters that are the subject of this Consent Decree.

22. ASC agrees that any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights or remedies attendant to the enforcement of a Commission order.

23. The Parties agree that the requirements of this Consent Decree shall expire thirty-six (36) months from the Effective Date.

24. This Consent Decree may be signed in counterparts.

For the Federal Communications Commission

For ASC Telecom, Inc.

By: \_\_\_\_\_  
Marlene H. Dortch  
Secretary

By: \_\_\_\_\_  
Michael Hyde  
Vice President and Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date