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DIVISION OF
ADMINISTRATION

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FLORIDA
PUBLIC SERVICE COMMISSION

ORIGINAL

May 2, 2000

VIA OVERNIGHT MAIL

Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Initiation of Show Cause Proceedings Against InternetU, Inc. ("InternetU") for Apparent Violation of Section 364.183(1), F.S., Access to Company Records, Florida Public Service Commission ("FPSC") Docket No. 000227-TX, Order No. PSC-00-0693-SC-TX

Dear Sir/Madam:

This Firm is counsel to DURO Communications, Inc. ("DURO"). DURO is in receipt of certain correspondence directed to InternetU by the FPSC in connection with the above-captioned matter. The purpose of this letter is to inform the FPSC that DURO does not hold any interest in the certificate granted to InternetU by the FPSC, and as such, is not the proper recipient of the FPSC's correspondence in connection with this matter.¹

I. DESCRIPTION OF DURO

By way of background, DURO is a privately-held Delaware corporation headquartered at 1211 Semoran Boulevard, Suite 217, Casselberry, Florida 32707. DURO currently operates one of the largest Internet service provider ("ISP") dial-up networks in the Southeast, and serves residential and business customers in Florida, Georgia, North Carolina, Kentucky, Tennessee and Mississippi. Since its inception, DURO has acquired a substantial customer base in the southeastern United States

¹We understand that DURO personnel and counsel for DURO have engaged in several telephonic conversations with the FPSC's staff in order to provide clarifying information regarding this matter prior to the FPSC's issuance of the Order to Show Cause on April 13, 2000. DURO hereby files this letter in order to further clarify that it does not own any rights to the FPSC certificate held by InternetU.

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through a series of acquisitions involving other ISPs.

II. NEXUS BETWEEN DURO AND INTERNETU

In order to expand its Florida ISP operations, on March 26, 1999, DURO acquired certain assets of digital.net, l.l.c. ("Digital.Net"), an ISP operating in Rockledge, Florida. Prior to its acquisition by DURO, Digital.Net had itself apparently engaged in a series of ISP acquisitions, and notably, had acquired certain Internet assets of InternetU. The assets acquired by Digital.Net apparently included all of InternetU's Internet-related assets, as well as rights to the InternetU trade name and Internet subscriber list information.²

III. RELEVANT PROVISIONS CONTAINED IN ASSET PURCHASE AGREEMENT BETWEEN DURO AND DIGITAL.NET

Upon review of the Asset Purchase Agreement between DURO and Digital.Net, it appears that DURO obtained, along with various other Internet assets of Digital.Net, certain "transferable rights" to any licenses, permits, easements, registrations or authorizations issued or granted to Digital.Net prior to the acquisition. Specifically, Section 1.1(d) of the Asset Purchase Agreement states that DURO acquired:

[a]ll *transferable rights* associated with the licenses, permits, easements, registrations and authorizations *issued or granted to Seller* by any governmental authority with respect to the operation of the Business, including, without limitation, any license to operate as a Competitive Local Exchange Carrier, those licenses and authorizations listed on Schedule 1.1(d) attached hereto, and all applications therefor, together with any renewals, extensions, or modifications thereof and additions thereto;³

²DURO is not in possession of any of the acquisition documents related to the acquisition of InternetU by Digital.Net.

³Asset Purchase Agreement by and between DURO Communications, Inc., digital.net, l.l.c. and Digicom USA, LLC, dated March 26, 1999, §1.1(d) (emphasis supplied) [hereinafter

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Further, Schedule 1.1(d) of the Asset Purchase Agreement discloses that such “transferable rights” included any rights that Digital.Net *might* have had with respect to the “Certificate to Provide Alternative Local Exchange Telecommunications Services issued to InternetU, Inc.”⁴ However, the Schedule further explicitly discloses that “this certificate [the InternetU certificate] *was not transferred* to digital.net, l.l.c.”⁵

Consequently, to the extent (i) that any governmental authority (*e.g.*, the FPSC) issued or granted Digital.Net any of such “licenses, permits, easements, registrations and authorizations”, and (ii) that such licenses or other authorizations were transferable from Digital.Net to DURO, then DURO obtained the right to transfer such licenses or other authorizations from Digital.Net to DURO. However, inasmuch as the InternetU certificate issued by the FPSC was never acquired by Digital.Net (whether by transfer from InternetU or by action of the FPSC), DURO did not acquire any interest in the InternetU certificate issued by the FPSC as a result of its acquisition of Digital.Net.

IV. CONCLUSION

Based upon the foregoing, it appears that the certificate issued by the FPSC to InternetU was never transferred to - and might not have been even acquired by - Digital.Net. As such, Digital.Net did not hold any right to transfer the certificate to DURO, and thus, DURO did not obtain any “transferable rights” to the certificate issued by the FPSC to InternetU.

While DURO is not currently aware of the name or other identity of the entity that retains the right to the InternetU certificate issued by the FPSC, DURO stands ready, willing and able to assist the FPSC in whatever manner possible to resolve this matter.

Asset Purchase Agreement]. Excerpts from the Asset Purchase Agreement are attached hereto at Exhibit “A”.

⁴Asset Purchase Agreement, Schedule 1.1(d).

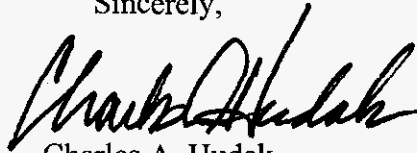
⁵Asset Purchase Agreement, Schedule 1.1(d) (emphasis supplied).

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If you have any questions or comments, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles A. Hudak". The signature is fluid and cursive, with a large initial "C" and "H".

Charles A. Hudak
Counsel for DURO Communications, Inc.

CAH/jh

enc.

cc: DURO Communications, Inc.

EXHIBIT "A"

**EXCERPTS FROM ASSET PURCHASE AGREEMENT BETWEEN
DURO COMMUNICATIONS, INC. AND DIGITAL.NET, L.L.C.**

1.1(d)

(d) Licenses and Authorizations. All transferable rights associated with the licenses, permits, easements, registrations and authorizations issued or granted to Seller by any governmental authority with respect to the operation of the Business, including, without limitation, any license to operate as a Competitive Local Exchange Carrier, those licenses and authorizations listed on Schedule 1.1(d) attached hereto, and all applications therefor, together with any renewals, extensions, or modifications thereof and additions thereto;

(e) Current Assets; Accounts Receivable. All current assets ("Current Assets") of Seller including cash on hand and in bank accounts, all accounts receivable of Seller incurred in the ordinary course of business and such accounts receivable are included on Seller's balance sheet, as determined in accordance with reasonable and commercially acceptable accounting principles, consistently applied, that reflect in all material respects the actual financial condition and results of operations of Seller ("Accounting Principles") a complete list of such accounts receivable is attached hereto as Schedule 1.1(e) ("Accounts Receivable");

(f) Goodwill. All of the goodwill of Seller in, and the going concern value of, the Business, and all of the business and customer lists, proprietary information, and trade secrets related to the Business; and

(g) Records. All of Seller's customer logs, location files and records, employee records, and other business files and records, in each case relating to the Business.

The assets, properties and business of Seller being sold to and purchased by Buyer under this Section 1.1 are referred to herein collectively as the "Assets."

1.2 Excluded Assets. There shall be excluded from the Assets and retained by Seller, to the extent in existence on the Closing Date, the following assets (the "Excluded Assets"):

(a) Other Assets. All other assets of Seller which are not used or held for use in connection with the Business or otherwise necessary to the operation of the Business now or after the Closing Date and which are set forth on Schedule 1.2(a) attached hereto;

(b) Excluded Contracts. All of Seller's right, title and interest in, to and under the Contracts listed on Schedule 1.2(b) attached hereto (the "Excluded Contracts");

(c) Licenses and Authorizations. All of Seller's right, title and interest in non-transferable rights associated with the licenses, permits, easements, registrations and authorizations issued, or granted to Seller by any governmental authority with respect to the operation of the Business, and all applications therefor, together with any renewals, extensions, or modifications thereof and additions thereto. A true and complete list of such licenses is attached hereto as Schedule 1.2(c).

Schedule 1.1(d) Licenses and Authorizations

Certificate to Provide Alternative Local Exchange Telecommunications Services issued to InternetU, Inc.. (this certificate was not transferred to digital.net, l.l.c.)

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