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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

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In re:

PATHNET OPERATING, INC. et al.,

Debtors

Chapter 7

Case Nos. 01-12266-SSM

DECLARATION OF WILLIAM SMEDBERG

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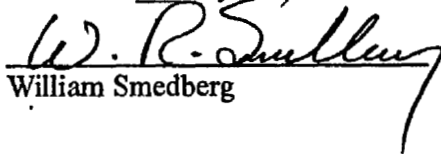
I William Smedberg declare under penalty of perjury as follows:

1. I am the former of Executive Vice President of Pathnet, Inc. ("PNI");
2. I am also the former Executive Vice President of Pathnet Operating, Inc. ("POI");
3. I negotiated the Agreement between Pacific Fiber, Link, LLC, the predecessor to 360networks (USA) inc. ("360"), and PNI dated March 21, 1999 ("Joint Build Agreement");
4. Pursuant to the Joint Build Agreement, 360 agreed to agree to design, engineer, construct, install, and maintain a three (3) conduit fiber optic telecommunications system between Denver, Colorado and Chicago, Illinois (the "Project") and to sell to PNI one (1) conduit and fifty percent (50%) of the total number of fibers pulled through the Primary conduit and associated improvements (the "Joint Build Agreement") in consideration of PNI, *inter alias*, paying fifty (50%) of the costs of constructing the telecommunications system, the right to utilize an equal amount of collocation space in the re-generation sites, with 360, or 120 square feet, whichever is greater (Joint Build Agreement, paragraph 19.1.2), the right to use fifty percent (50%) of each regeneration site (Joint Build Agreement, Exhibit A, paragraph 2 A) and for 360 constructing a "meet me" vault in each regeneration site that allows PNI to connect with its IRU fibers to other fibers outside the network (Joint Build Agreement, Exhibit F, 3(d));
5. PNI assigned the Joint Build Agreement to POI;
6. As shown by my Declaration, the Declaration of Dan Gray, and the Declaration of Shawn O'Donnell, POI is entitled to credits from 360 totaling \$14,404,989.19 which consist of the following:
 - 6.1. \$ 640,937.00 for project management fees associated with additional conduits;
 - 6.2. \$ 241,181.19 in project management meet for change orders;
 - 6.3. \$1,538,793.00 in direct fiber excess spending;
 - 6.4. \$4,928,000.00 in direct pop excess spending;
 - 6.5. \$ 453,288.00 in liquidated damages;
 - 6.6. \$3,117,150.00 as its share of the proceeds from the sale of conduits and/or fibers to MCI/World Com ;
 - 6.7. \$1,136,987.00 for invoice 20-00-1111 for which 360 never gave POI credit;
 - 6.8. \$2,348,653.20 in project management fees for project management that POI was forced to perform as the result of 360's failure to properly managed the project;

7. POI is entitled to a credit in the amount of \$640,937.00 for project management fees associated with the construction of additional conduits by 360 as part of the telecommunications system:
 - 7.1. Under the Joint Build Agreement, paragraph 11.2.2, 360 was entitled to a project management fee of ten percent (10%) on the Purchase Price as defined by paragraph 11 and Exhibit B of Joint Build Agreement;
 - 7.2. The Joint Build Agreement required that the Parties agree upon any increase in the number of conduits or the amount of fiber optic cables. (Paragraph 7.1 and Exhibit B);
 - 7.3. 360 wanted to increase the number of conduits from 3 as provided by the Joint Build Agreement to 5.
 - 7.4. Richard Jalkut, the former President of POI and I discussed 360's proposal to add additional conduits with Bruce Tinney and Jerry Tharp of 360;
 - 7.5. POI agreed to the addition of the conduits to the Project by 360, on the condition that the project management fee would not apply to any of the work associated with the additional conduits;
 - 7.6. Subsequently, in the early part of 2001 both Bruce Tinney and Jerry Tharp reaffirmed to me that 360 had agreed that the project management fee should not have been charged to the work associated with the additional conduits;
 - 7.7. Increasing the number of conduits from 3 to 5 throughout the Project increased the budget for the Project by \$12,818,744
 - 7.8. Despite the agreement with 360, 360 billed POI for ten percent (10%) management fee based upon the budgeted increased costs associated with the increased conduits;
 - 7.9. Therefore, POI is entitled to a credit of ten percent (10%) of one half of the increase, or ten percent (10%) of \$6,409,372, which is \$640,937;
8. POI is entitled to a credit in the amount of \$241,181.19 for project management fees charge to POI by 360 for change orders for work associated with increasing the number of conduits from 3 to 5:
 - 8.1. The change orders are all dated March 22, 2000 and total \$4,963,160.00, ten percent (10%) of which is \$496,316.00 and ½ of which is \$248,158.00, which is the amount that 360 claims POI owes;
 - 8.2. As stated in paragraph 6 above, POI agreed with 360 that 360 could increase the number of conduits from 3 to 5 on the condition that the project management fee would not apply to any of the work associated with the additional conduits, which both Bruce Tinney and Jerry Tharp subsequently reaffirmed to me;

9. POI is entitled to a \$486,618 in liquidated damages from 360 based upon 360's failure to complete the segments of the Project from Chicago to Omaha on or before the scheduled completion date of December 31, 1999 as required paragraphs 10.1.3 and 12.1.7 of the Joint Build Agreement;
 - 9.1. On May 25, 2000, 360 gave notice to POI of substantial completion of the Project for the segments between Chicago and Omaha;
 - 9.2. There are 146 days from January 1, 2000 through May 31, 2000;
 - 9.3. Paragraph 10.1.1 of the Joint Build Agreement provides for liquidated damages at a rate of \$3,333.33 per day for failure to complete segments of the Project on time;
 - 9.4. One hundred forty six times \$3,333.33 equals \$486,618;
10. POI also claims a credit of \$2,348,653.20 in project management fees for project management that POI was forced to perform as the result of 360's failure to properly managed the project and substantially adding to the Project management inefficiencies by changing Project managers three times during the Project:
 - 10.1. Paragraph 11.2.2 of the Joint Build Agreement provides for payment to 360 of a management fee of ten percent (10%) of the Purchase Price of the Project as defined by paragraph 11.2 of the Joint Build Agreement;
 - 10.2. The total budget for Project Costs provided for in paragraph 11.4 of the Joint Build Agreement was \$117,432,660;
 - 10.3. POI claims two percent (2%) of the total budget or \$2,348,653.20 because it was forced to undertake substantial project management responsibilities, which included, for example: (1) scheduling the weekly Project meetings, extensively participating in the Project meeting and drafting and circulating the minutes for each Project meeting; (2) assisting 360 to meet its obligation to generate the required monthly reports, schedules, and budgets from October 1999 until April 14, 2000, and (3) performing one hundred percent (100%) of the Project management for the facilities that POI was forced to develop in Chicago, Illinois, Des Moines, Iowa, and Omaha, Nebraska..

Dated this 20th day of October 2003


William Smedberg