



EB Exh 23

AGREEMENT OF GENERAL PARTNERSHIP

DOCKET FILE COPY ORIGINAL

This Agreement of Partnership is made and entered into this 2nd day of June, 1989, by and between those persons who agree to become parties to this Agreement by signing their names to this Agreement and Exhibits hereto, and such other documents as this Agreement shall require.

WITNESSETH:

That, intending to be legally bound hereby, the parties hereto agree to form a general partnership under the laws of the State of New Jersey upon the following terms and conditions.

1. **FORMATION.** The parties hereto hereby form a general partnership. ("Partnership") pursuant to the provisions of the laws of the state of New Jersey. The names and addresses of all partners shall be listed in "Exhibit A" attached to and made a part hereof.

2. **NAME.** The Partnership shall do business under the name of Alec Cellular Communications.

3. **PLACE OF BUSINESS.** The initial principal place of business for the Partnership shall be Cranford, New Jersey. Upon the Partnership winning a RSA cellular lottery, the Partnership shall proceed to move its principal place of business to the largest city in such RSA, and each partner shall proceed to qualify to do business in such state.

4. **PURPOSE OF THE PARTNERSHIP.** The sole business for which the Partnership is formed shall be to carry on the business of ownership, management and operation of cellular telephone systems and application for licensing with respect thereto; including but not limited to filing cellular license applications in up to 426 Rural Statistical Areas (RSAs) throughout

FCC Form 2
7/9/02
BMZ
Jones

Sent by: CLEMENTE DICKSON MUELLER

9734558118;

Federal Communications Commission

Docket No. 1010702 Exhibit No. 53

Presented by _____

Disposition { **Identified** _____ ✓
Received _____ ✓
Rejected _____

Reporter Hazzard

Date 10/30/02

The funds will only be paid out as needed and the Partnership Manager will report to the partners the use of the funds under the guidelines of Paragraph 12. The capital contributions by the partners to the Partnership shall be used and applied to the Partnership for the purposes set forth herein and for no other purposes. Capital contributions by the partners shall be credited to their respective capital accounts upon the transfer of the amount by each to the Partnership. No partner shall receive or be entitled to receive interest on any of his capital contribution.

8. **ALLOCATION OF PROFITS, LOSSES AND LIABILITIES.** Each partner shall share in the profits, losses and liabilities in the proportion that the total number of Units owned by him bears to the total outstanding Units of the Partnership. At the end of each calendar year, or as often as may be determined from time to time, a full, true, and accurate account shall be made in writing of that year, or the last day of such interim period, reflecting the amount of net profits or net losses sustained. The profits of the Partnership shall be treated as a contribution to the capital of the Partnership and the capital account of each partner shall be credited with the amount of Partnership profits distributable to him. The profits which exceed the reserve held in the Partnership account for working funds shall be distributed under the terms of Paragraph 20.

9. **FISCAL YEAR.** The fiscal year of the Partnership shall be the calendar year.

10. **BOOKS AND RECORDS.** Proper books and records shall be kept with reference to all Partnership transactions and each partner shall, at all reasonable times during business hours, have access thereto and may inspect and copy any of them. The books and records of the Partnership shall be reviewed annually at the expense of the Partnership by a certified public accountant, who shall prepare and deliver to the Partnership and each partner for filing the appropriate Partnership information returns and such other schedules and forms as may be required by the individual partners.

the United States. The Partnership shall have the authority to take any and all actions necessary, incidental and/or desirable to accomplish its purpose.

5. **TERM OF THE PARTNERSHIP.** The Partnership shall commence business on the day and year first set forth above and shall continue for an initial term of ten years with the option to be renewed for additional 10 year terms at the partners option. The Partnership may be terminated before the initial 10 year period expires by operational law, other provisions of this Agreement or mutual agreement of the partners.

6. **PARTNERS.** The Partnership shall be among those persons including corporations or other partnerships agreeing to become parties to this Agreement by affixing their names to this Agreement, and any other documents required hereunder and who make their capital contributions to the Partnership in cash as provided for herein. The Partnership shall not have more than twenty-five (25) partners. The maximum number of Units which may be issued is twenty-five (25). However, it will be the right of the original partners to admit additional partners later under the terms of Paragraph 18.

7. **CAPITAL CONTRIBUTIONS; USE OF PROCEEDS:** The capital of the Partnership shall consist of no less than \$1,000.00 which shall be contributed by the partners interest free. Each partner shall contribute contemporaneously with the execution of this Agreement amount equal to one-sixth (1/6) of his Expected Contribution to Partnership account as is determined in the calculation and indicated in Exhibit C to this Agreement of General Partnership. Each partner will then be responsible for the remaining equal monthly payments commencing on June 1, 1988 and thereafter being due on July 1, 1988, August 1, 1988, September 1, 1988, and concluding on October 1, 1988. The proceeds of the Partnership shall be allocated as follows:

FILING FEES DUE
TO FCC
\$84,600

FINANCIAL
COMMITMENT LETTER
\$5,000

PARTNERSHIP
MANAGEMENT FUND
\$7,400

11. MANAGEMENT OF THE PARTNERSHIP. Unless otherwise waived, meetings shall be held at least once annually at such time and place as may be designated from time to time by the partners. Each of the partners shall be entitled to vote in accordance with the percentage of ownership held by such Partner for the management and conduct of the Partnership business in accordance with the percentage of ownership as reflected in the books and records of the Partnership. A majority of the ownership interest in the Partnership shall constitute a quorum for the transaction of business.

When a quorum is present at any meeting, all decisions shall, unless otherwise provided in this Agreement, be decided by a vote of two-third (2/3) of the Units represented. Voting may be in person, by proxy, or telephone with subsequent written confirmation.

12. EMPLOYMENT OF MANAGER. The management and control of the Partnership and all of its affairs shall be in the partners. In order to simplify the operations of the Partnership, the partners may employ a manager to serve in such capacity until such time as the partners designate a new manager by a vote of more than 50% of the outstanding Units of the Partnership. The manager may, but is not required to be a partner. The partners may delegate to the manager the responsibility for the day to day bookkeeping and ministerial acts of the Partnership.

The manager of the Partnership shall have the right and power upon attaining the necessary votes of two-thirds (2/3) of the Units of the Partnership, to bind the Partnership and control the general management and final determination of all questions relating to the usual daily business affairs, and ministerial acts. The manager shall at no time bind the Partnership by a written contract unless he has attained the necessary two-thirds (2/3) vote of the Partnership Units to do so. This approval may be done in the form of unrestricted proxies given to the Manager by the individual partners. In this connection, and not by way of limitation, the manager is authorized to do any and all things and to execute any and all documents, contracts, evidence of indebtedness, security agreements, financing statements necessary or expedient to carry out and effectuate the purpose of the parties as expressed in

this Partnership Agreement. The manager shall have specific authority to execute such agreements as are necessary or convenient, including promissory notes and related instruments, as the manager may deem necessary or convenient to contract for consulting or professional services, and cellular application services on behalf of the Partnership. All business arrangements entered into shall be on such terms and conditions as generally would be characteristic of a businessman in similar circumstances exercising prudent and sound business judgement. The manager shall devote such attention and business capacity to the affairs of the Partnership as may be reasonably necessary. In this connection the parties hereby acknowledge that the manager may manage other partnerships and engage in other related or conflicting businesses. The manager is hereby authorized and empowered, as the sole agent and representative of the Partnership, to open bank accounts in the name of the Partnership and in connection therewith is authorized as sole signer on any such bank account and is empowered to deposit and withdraw funds from any such accounts for Partnership purposes only, in the manager's sole discretion. Monthly bank reconciliations will be prepared and provided to no fewer than two members of the Partnership. Such reconciliation will be mailed to the designated partners within fifteen (15) days from the end of the banking period. The manager shall receive reasonable compensation for services to the Partnership in such amounts as the partners shall from time to time determine. The initial manager to serve until the partners otherwise determine, shall be identified on Exhibit B attached hereto and made a part hereof.

13. **CONTRACTS.** Except for the authority granted to the manager, no partner shall at any time sign the Partnership name or place the Partnership's credit in any manner, as surety, for guarantor of any paper, bill, bond, note or draft or other obligation whatsoever, nor shall any partner assign, pledge, or mortgage any of the Partnership property without the consent of two thirds (2/3) of the partners.

14. **RIGHTS AND OBLIGATIONS OF SELLING PARTNER.** It is the right of a partner (hereinafter referred to as "selling partner") to sell his interest in the Partnership. Before

selling his interest to a party outside the Partnership, he must first give a right of first refusal to his partners inside the Partnership (herein after referred to as "remaining partners"). The selling partner must give notice to the remaining partners at least sixty (60) days prior to accepting an offer from any outside party.

The remaining partners shall have the sixty (60) day period to match any offer that the selling partner received. The selling partner must provide a notarized copy of the offer that he received from the outside party. If at the end of the allotted 60 day period the partners do not acquire the selling partner's interest, the selling partner is free to sell the interest to the party outside the Partnership.

If the remaining partners do acquire the selling partner's interest, they shall make payment to the selling partner within the sixty (60) day period. The selling partner shall pay back to the Partnership one percent (1%) of the proceeds received from the remaining partners to cover the costs incurred in completing the transaction.

The withdrawal of any partner shall not be deemed to prevent or interfere with the continuance of the Partnership business by the remaining partners, nor to necessitate the winding up of the Partnership.

This paragraph 14 shall be subject to the provisions of paragraph 15 with respect to a partner's transfer of his interest.

15. ASSUMPTION OF ASSIGNEES. Any transferee or assignee to whom an interest in this Partnership may be transferred under the terms of this Agreement, who is not at the time of such transfer a party to this Agreement, shall take such interest subject to the terms and conditions of this Agreement and acknowledge same by a written agreement to that effect.

16. RIGHTS UPON DEATH OF A PARTNER. The estate shall have the right to determine if it desires to assume the rights and responsibilities of a deceased partner. If so, the estate shall assume the responsibilities, and the Partnership shall continue with no interruption. If the estate desires to sell its Partnership interest, the following terms will be implemented: The books of the Partnership shall be closed as of the date of written notice

from the estate of the partner, and within thirty (30) days thereafter, a statement shall be prepared of all Partnership assets and liabilities. In preparing such statement, all assets of the Partnership shall be valued as of such date as follows:

(a) In valuing any security which is listed upon an exchange or over the counter, its value shall be the average of the high and low sales on such date or, in case there shall be no reported sales, the average of the bid and asked price on such day, or, if there is no bid or asked price, the average of the high and low sales or bid and asked price on the next prior day on which there is a record thereof.

(b) All other Partnership assets, including securities not listed upon the exchange or over the counter, shall be valued by the remaining partners and the legal representatives of the deceased partner at their fair market value, and in determining such value, all relevant factors, including good will and other intangible items bearing upon such valuation shall be considered. In the event the remaining partners and the legal representative of such deceased partner are unable to agree upon the fair market value of such assets, then and in that event, the fair market value of such assets shall be determined by three arbitrators, one to be selected by the remaining partners, one by the legal representative, and the two so selected to name the third. The arbitrators shall forthwith determine the fair market value of such assets and the determination of the majority arbitrators shall be final and binding upon the parties. The fees and expenses of the arbitrators shall be divided equally one-half (1/2) to be paid by the remaining partners and one-half (1/2) to be paid by the legal representative.

Within forty-five (45) days of such determination, the remaining partners shall pay to the legal representatives of the deceased partner, his pro rata share in the net worth of the Partnership as above determined, less an amount equal to one percent (1%) of such share to cover expenses. In the event there is any contingent liability of the Partnership which cannot

finally be determined on the date herein provided for payment, an amount estimated to cover the deceased partner's share of such contingent liability may be withheld until such liability, if any, is finally determined, and the amount remaining due shall then be payable to the representative of the deceased partners.

The death of a partner shall not be deemed to prevent or interfere with the continuance of the Partnership business by the remaining partners nor to necessitate the winding up of the Partnership.

17. PROHIBITION AGAINST TRANSFERS. Except as otherwise provided herein, no partner may sell, assign, transfer, encumber, hypothecate or otherwise dispose of any Partnership property or assets of the Partnership without two thirds (2/3) consent of the partners and title to said interest or property shall not pass in the absence of such consent. Any such prohibited transfer, if attempted, shall be void and without force and effect. This provision does not pertain to the individual partners' personal ownership interest in the Partnership, but only those assets acquired by the Partnership and the operating cellular licenses the Partnership was awarded by the Federal Communications Commission.

18. ADMISSION OF NEW PARTNERS. A new partner may be admitted to the Partnership by the completion of the following: 1) upon the new partner's execution of this Agreement or a counterpart together with all other documents required by this Agreement; 2) upon payment of the agreed upon amount set forth by the 80% vote of the existing partners.

19. TERMINATION. This Partnership may be terminated by a vote of two-thirds (2/3) majority of the Units owned by the partners. Upon the Partnership being terminated, the partners shall proceed with reasonable promptness to liquidate the business of the Partnership. In case of such termination, the partners shall share in the profits and losses of the business during the period of liquidation in the same proportions in which they share such profits and losses prior thereto. The proceeds of liquidation shall first be used to pay or provide for all debts of the Partnership. The remaining assets shall be divided according to

the proportionate interest of the partners on the basis of their respective capital accounts as they stood upon the date of termination, after crediting or debiting thereto, the net profit or net loss accrued or incurred, as the case may be, from the beginning of the fiscal year in which such termination occurs to the date of distribution.

20. PERIODIC DISTRIBUTIONS. A partner may, notwithstanding the terms of paragraph 8 hereof, elect to receive a distribution of profits, if available, out of his respective capital account, provided however that such distributions do not exceed 100% of the total profits previously credited to that partner's individual capital account and that the amount does not reduce the reserve cash balance below the level that the Partnership elects to maintain in the Partnership for operating costs. Distribution may be made on a monthly basis but not oftener than twelve times per year, but will be done on a quarterly basis in due course if the profits and funds are available. No distribution shall be made in any event if such distribution would reduce the capital of the Partnership below \$10,000.00 or the balance later adopted by an 80% vote of the partners.

A partner electing to receive a distribution over and above the quarterly distributions shall notify the manager of the Partnership in writing of such request. The manager shall have the discretion to refuse to make any such requested distribution if, in the judgement of the manager, the making of such a distribution would adversely affect the investment portfolios of the Partnership. A decision of the manager may be overridden at any time by the concurrence of a vote of 80% of the outstanding Units of the Partnership.

21. DILUTION OF PARTNERSHIP INTEREST. From time to time, it may become necessary for the Partnership to access a Capital Call to all partners to raise operating funds for the Partnership. The amount of such Capital Call will be adopted by the partners by means of a 2/3 majority vote. Each partner will be given at least thirty (30) days from the date of the assessment to contribute his portion of the Capital Call to the Partnership. If any partner is unable or unwilling to make his Capital Call he will be deemed to be in default. The remaining partners shall then have the right to divide the delinquent payment amongst

themselves equally and make the payment on behalf of the defaulting partner. The defaulting partner shall then have thirty days to reimburse the partners the pro-rata portion of the Capital Call that they made on his behalf, plus interest of 12% calculated on an annual basis. If the defaulting partner fails to make the reimbursement within the required time, the defaulting partner's interest shall be diluted and each partner's now interest in the Partnership shall be recalculated by factoring his total paid into the Capital Account of the Partnership by the total contributions received into the Partnership by all partners.

22. **SECURITIES LAW.** The partners hereby covenant that they are residents of the States reflected in their Subscription Agreement and are acquiring their Units in the Partnership solely for investment purposes and not with a view to the distribution or resale thereof and the purchase of their interest in the Partnership is expressly subject to, if applicable, the conditions and limitations on transferability set forth in the Subscription Agreement, the Securities Act of 1933, as amended and this Agreement.

23. **NOTICE.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when deposited in the United States mail, first class postage prepaid, certified or registered, return receipt requested, addressed to the Partners at their respective addresses as set forth in Exhibit A, or at such other address as may be specified by written notice given as set forth herein. Any notice of a Partnership meeting shall be delivered to the Partners at least ten (10) days prior to the date set for the meeting. Such notice shall be delivered to the Partners by means of overnight delivery by such service that requires a signature from the receiving partner.

24. **DISCLOSURE OF PARTNERS HISTORY.** In the event that any one or more Partner/Partners in the aforementioned Partnership fails to correctly disclose or willfully omits any pertinent information as requested in the attached "Cellular Questionnaire", then the said Partner/Partners will be held responsible for any liability, costs and claims, including reasonable legal fees arising from the non-disclosure in the aforementioned "Cellular

Questionnaire". Further, by entering into the Partnership Agreement the Partner represents and covenants that he or she has sufficient knowledge of cellular telephone operations, and that he is fully capable of exercising his partnership voting rights intelligently and effectively with respect to the operations and management of the affairs of the Partnership.

25. **HOLD HARMLESS.** Each partner shall indemnify and hold harmless the partnership and each of the partners from any and all expenses and liability resulting from or arising out of any negligence or misconduct on his part to the extent that the amount exceeds or is not covered by any applicable insurance carried by the partnership.

26. **APPLICABLE LAW.** This Agreement shall be construed under and in accordance with the laws of the State of Dallas.

27. **OTHER INSTRUMENTS.** Parties hereto covenant and agree that they will execute such other and further documents as are or may become necessary or convenient to effectuate and carry out the purposes of the Partnership.

28. **PRIOR AGREEMENT.** This Agreement supersedes any prior understandings or written or oral agreements between any of the parties hereto.

29. **COUNTERPARTS.** This Partnership Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original.

EXHIBIT A

The partners of the General Partnership are:

Vincent DiCostanzo

NAME	ADDRESS	CITY	STATE	ZIP CODE	TELEPHONE
Vincent DiCostanzo	415 Monroe Avenue	New Milford, New Jersey		07646	(201)262-8749

Jay McInerney

NAME	ADDRESS	CITY	STATE	ZIP CODE	TELEPHONE
Jay McInerney	246 West 11 th Street	New York, New York		10014	

Shafi M. Sharifan

NAME	ADDRESS	CITY	STATE	ZIP CODE	TELEPHONE
Shafi M. Sharifan	77 Yantecaw Avenue	Bloomfield, New Jersey	07003		(201)893-9245

Dennis R. Spence

NAME	ADDRESS	CITY	STATE	ZIP CODE	TELEPHONE
Dennis R. Spence	9 James Street	Bloomfield, New Jersey	07003		(201)743-1851

Joel I. Bunis

NAME	ADDRESS	CITY	STATE	ZIP CODE	TELEPHONE
Joel I. Bunis	524 Morris Avenue, Apt. 2E	Elizabeth, New Jersey	07208		Bus. (201)273-2464 (201)289-2418

Nancy Kelner

NAME	ADDRESS	CITY	STATE	ZIP CODE	TELEPHONE
Nancy Kelner	38 Georgia Street	Cranford, New Jersey	07016		Bus. (201)273-3023 (201)272-9072

Edward Rogers

NAME	ADDRESS	CITY	STATE	ZIP CODE	TELEPHONE
Edward Rogers					

EXHIBIT B

The initial Manager of the Partnership is:

Allan C. Kane

NAME

151 North Avenue East

ADDRESS

Stanford

CITY

New Jersey

STATE

07016

ZIP

201-276-0070

TELEPHONE