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(1926 - 1992)

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September 8, 1999

Florida Public Service Commission  
Division of Administration  
2540 Shumard Oak Blvd.  
Gunter Building  
Tallahassee, FL 32399-0850

Re: Amended Response of Accutel Communications to Order to Show Cause

Enclosed please find six copies of our Amended Response to Order to Show Cause. This Amendment is being filed in order to correct typographical errors contained in the original Response of September 7, 1999.

Thank you for your consideration in this matter.

Yours very truly,

EARLY, LENNON, PETERS & CROCKER, P.C.

By David G. Crocker  
David G. Crocker

AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
LEG \_\_\_\_\_  
MAS \_\_\_\_\_  
OPC \_\_\_\_\_  
PAI \_\_\_\_\_  
SEC \_\_\_\_\_  
WAW \_\_\_\_\_  
OTH \_\_\_\_\_

DGC/dte  
Enclosures

FLORIDA  
PUBLIC SERVICE COMMISSION  
1999 SEP -9 AM 10:16  
DIVISION OF  
ADMINISTRATION

DOCUMENT NUMBER - DATE  
10857 SEP-98  
FPSC-RECORDS/REPORTING

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In Re: Order to Show Cause  
Proceedings Against Accutel  
Communications for Unlawful  
Billing Practices in Violation  
of Section 364.10(1) and  
Section 364.604(2), F.S. and  
Insufficient Management  
Capability pursuant to Section  
364.337(3), F.S.

Docket No. 981488 TI  
Order No. PSC-00-1619-SC-TI

Amended  
Response of Accutel Communications, Inc.  
To Order to Show Cause Issued August 18, 1999

NOW COMES Accutel Communications, Inc., ("Accutel") and, in Response to the Order to Show Cause issued August 18, 1999, respectfully represents as follows:

1. In December, 1997, Accutel entered into an Agreement with Telecommunications Service Center, a Florida corporation, ("TSC"), which provided that TSC would assume all billing and collection functions on behalf of Accutel. As part of that Agreement, a Third Party Payment Agreement was executed by Accutel, TSC and OAN Services, Inc. A copy of the Third Party Payment Agreement is attached as Exhibit 1.
2. By virtue of the terms of Exhibit 1, TSC received all the billing proceeds from Accutel's billings from OAN.
3. The terms of Exhibit 1 continued in effect until Accutel and TSC entered into Amendment Number One to the Third Party Agreement on or about May 7, 1998. Amendment Number One is attached as Exhibit 2.
4. Although Accutel and TSC executed Exhibit 2 on or about May 7, 1998, OAN did not execute the Amendment at that time and the Amendment did not become effective until signed by OAN.
5. Under the initial arrangement between Accutel and TSC, TSC was given access to Accutel's data as contained in the data bank of OAN.
6. TSC was not cut off from the OAN data bank until about mid-June, 1998.
7. With access to Accutel's data in the OAN data banks, TSC was able to enter billing information to OAN without the knowledge of Accutel.

DOCUMENT NUMBER-DATE

10857 SEP-98

FPSC-RECORDS/REPORTING

8. Accutel did not learn of the continued access to its data in the OAN data base until mid-June, 1998, at which time it caused OAN to stop allowing TSC access.

9. In the Spring of 1998, Accutel entered into agreements with certain calling card companies to bill their charges and to provide carrier service when the calling cards were used.

10. Among the calling card companies for which Accutel became the billing agent in the Spring of 1998 were Estate Planning Services, Inc., d/b/a EPS Telecom, Public Communications, Inc., and American Network, Inc.

11. Copies of the calling card billing agreements between Accutel and Public Communications, Inc., and Accutel and American Network, Inc., are attached as Exhibits 3 and 4, respectively.

12. The calling cards distributed by EPS and Public Communications ("PT") and American Network, Inc., ("AmerNet") contained a monthly recurring fee of \$4.95 and a one time activation fee of \$4.95. Usage charges for the long distance charges incurred by use of the card were to be billed monthly by Accutel.

13. All of the billing for the foregoing, including activation fees, monthly recurring charges and usage charges was to be done for Accutel by TSC through OAN Services.

14. At the same time as it was acting as a billing agent for the calling card companies, Accutel continued to be a reseller of long distance services to customers who designated Accutel as their primary interexchange carrier.

15. With respect to the calling card companies, Accutel was a billing agent, billing the card companies' charges to their customers, and in such cases the customers did not change their long distance carriers and no PIC charges were made or contemplated.

16. In the following cases as set forth in the list by the Division of Consumer Affairs in the 171 complaints alleging cramming against Accutel, Accutel was acting as a billing agent for a calling card company.

<u>Billing Number</u>	<u>Calling Card Company</u>
407 453 8516	EPS
561 790 5432	EPS
561 795 4286	EPS
407 860 1976	PT
941 379 0895	EPS
941 922 5058	EPS
850 656 5468	PT
561 791 1522	EPS

305 682-0725	EPS
561 968 8878	EPS
561 968 0710	EPS
407 668 4941	PT
407 668 8068	PT
941 763-1795	EPS
305 949 5889	PT
407 253 6196	EPS
407 380 1772	PT
305 891 0871	EPS
407 574 2967	EPS
850 871 3609	PT
904 743 9835	EPS
813 907 9566	EPS
904 734 9232	EPS
407 860 4238	EPS
407 323 4925	EPS
813 872 8752	EPS
954 797 7726	PT
850 926 4659	PT
813 989 8037	EPS
305 231 8689	EPS
850 747 8935	EPS
407 886 8611	PT
561 687 9675	EPS
850 862 8808	EPS
407 957 9422	EPS
941 983 8041	PT
954 584 5655	EPS
561 776 0040	EPS
407 277 8044	EPS
850 513 3178	PT
561 795 8874	PT
561 746 4788	EPS
561 588 7573	EPS
904 734 4830	PT
561 686 7039	EPS
561 622 5014	EPS
561 964 1666	EPS
850 913 0663	EPS
954 525 8463	PT
305 235 9376	PT
561 798 2109	EPS
561 785 8960	EPS
305 325 0876	PT

305 253 4842	EPS
407 349 5776	PT
305 251 8703	PT
352 796-6484	EPS
305 252 4726	EPS
561 627 4558	EPS
407 322 6427	EPS
561 369 0693	EPS
407 574 7372	EPS
407 860 3602	PT
850 271 9555	EPS
305 553 2628	EPS
407 574 5120	EPS
407 321 5177	EPS
561 743 2972	EPS
850 638 3889	EPS
352 429 4688	EPS
561 793 6755	EPS
561 626 5900	PT
904 752 6313	EPS
561 465 4726	EPS
941 424 0433	EPS
305 889 1762	EPS
904 441 1367	EPS
561 967 9961	EPS
941 637 8646	EPS
954 680 6102	EPS
954 431 7384	EPS
904 756 7896	EPS
561 966 9799	EPS
813 719 7153	EPS
904 355 4887	EPS
904 455 3902	EPS
305 233 8772	EPS
954 704 0351	EPS
352 860 1623	EPS
305 858 7292	EPS
904 789 5782	EPS
904 445 9417	EPS
850 562 0012	PT
407 952 1837	EPS
904 677 8575	EPS
954 987 6775	EPS
561 966 9799	EPS
904 441 1367	EPS

561 966 9524	EPS
941 732 7737	EPS
305 949 6267	PT
561 689 4994	EPS
941 954 4036	EPS
407 823 8020	EPS
954 722 3514	EPS
954 983 3325	EPS
352 331 4837	EPS
561 879 0177	EPS
954 436 2076	EPS
561 879 0030	EPS
407 238 0803	EPS
407 860 2500	EPS
813 866 8877	EPS
407 671 3190	EPS
561 287 1192	AmerNet
561 687 3736	EPS
850 271 1748	EPS
561 547 2494	EPS
561 471 1074	EPS
561 793 3274	EPS
561 564 0764	EPS
561 795 8874	EPS
813 894 6434	EPS
941 993 4111	EPS
561 478 1366	EPS
352 683 1129	EPS
561 744 5111	EPS
941 482 8015	EPS
305 770 1717	EPS
954 739 4378	PT
305 571 9676	PT
561 790 4639	EPS
561 733 4672	EPS
407 699 9610	EPS
941 453 0996	EPS
561 833 9698	EPS
941 729 9437	EPS
561 967 7244	EPS
941 746 4560	EPS
954 763 5024	EPS

17. The following cases as set forth in the list by the Division of Consumer Affairs show usage or charges by Accutel without any indication that Accutel was the billing agent

for calling card companies, i.e. a switch of the customers primary interexchange carrier to Accutel and the billing of usage charges or monthly service charges in accord with Accutel's tariffs:

Billing Number

561 589 0825  
864 235 4827  
864 269 0403  
813 677 0294  
813 525 2324  
813 960 1274  
954 566 9797  
813 398 0067  
813 653 4555  
305 274 1956  
941 355 5245

18. The following cases as set forth in the list by the Division of Consumer Affairs show no charges billed by or in behalf of Accutel:

Billing Number

305 638 2020  
608 362 7777  
813 752 8378  
813 978 1346

19. The remaining Billing Numbers not discussed above consist of accounts attributable to TSC which were inserted into the Accutel billing process without permission. TSC was having internal problems in the Spring of 1998 and this resulted in many erroneous billings being processed by TSC as the billing agent for Accutel. An example of the problems recurring at TSC at this time is set forth in Exhibit 5 attached.

20. The information utilized to establish the billing agent relationship with respect to specific Billing Numbers was taken from the information provided by OAN Services, Inc., to Louis J. Yambor, Regulatory Analyst, Florida Public Service Commission on December 17, 1998, which Accutel obtained during a deposition of Ronald Evans, OAN Services, in late August 1999.

21. Part of the evidence relied upon by the Commission in its Order to Show Cause is stated to be that Accutel has provided credits or refunds in 155 of the 171 alleged cramming violations.

22. The fact that Accutel was diligent and attempted to handle the grievances of the

calling card customers is in no way evidence of cramming by Accutel who was the billing agent for the calling card companies, any more than OAN's actions in crediting all of the 155 calling card customers is evidence that OAN committed cramming violations by billing the calling card companies' charges.

23. With respect to the calling card customers Accutel performed as a billing agent just as OAN was a billing agent.

24. With respect to the customers that Accutel switched to its long distance service, the monthly service charge by Accutel was pursuant to its tariffs and required to be charged to its customers.

25. During the period in question, there was no legal requirement that billing companies require calling card companies to provide evidence or proof of authorization for the issuance of a telephone calling card.

WHEREFORE, Accutel requests that the Commission find that it did not violate Section 364.10(1) or Section 364.604(2), F.S. and to further find that Accutel did not violate Section 364.337(3), F.S.; and,

Accutel further requests that the Order to Show Cause heretofore issued against it be dismissed.

Dated: September 8, 1999

ACCUTEL COMMUNICATIONS, INC.  
By: EARLY, LENNON, PETERS & CROCKER, P.C.  
Its Attorneys

By



David G. Crocker  
900 Comerica Building  
Kalamazoo, MI 49007  
(616) 381-8844



## THIRD PARTY PAYMENT AGREEMENT

This Third Party Payment Agreement (this "Agreement") is entered into this 16<sup>th</sup> day of December, 1997 between Payee ("Telecommunications Service Center"), a Florida corporation, with offices at 412 E. Madison Street, Suite 1200, Tampa, FL 33602, OAN Services, Inc. ("OAN"), a Texas corporation whose principal business address is 9255 Corbin Avenue, Northridge, California 91324, and Customer ("Nortel, Inc."), a Florida corporation whose principal place of business is 1060 S. Federal Hwy, Suite A, Delray Beach, FL 33444.

WHEREAS, Customer has entered into an agreement with Payee or has incurred a payment obligation to Payee; and

WHEREAS, Customer and Payee desire to have OAN Services make payments directly to Payee on behalf of Customer ; and

NOW THEREFORE, in consideration of the above recitals and the mutual covenants and conditions contained herein, the parties agree as follows:

1. Customer's payment obligation shall be made by the following method (subject to the conditions and limitations stated below):

(a) OAN agrees to remit directly to Payee during the term of this Agreement all of the Available Funds (as defined below). For purposes hereof, "Available Funds" means the amount of funds required to be remitted to Customer by OAN pursuant to the Billing Services Agreement; provided that any charges, fees, expenses, and other amounts payable to OAN pursuant to the Billing Services Agreement or under the Account Purchase Agreement dated January 1, 1997 between OAN and Customer shall in no event constitute Available Funds.

2. Customer agrees to indemnify and hold Payee harmless from any liability, damages or costs incurred, arising out of or relating to the lawful exercise by Payee of its rights under this Agreement.

3. Payee and Customer acknowledge and agree that OAN shall have no obligation or liability hereunder whatsoever (as a guarantor or otherwise) resulting from or arising out of the failure of any party hereto to comply with the terms of this Agreement. Customer and Payee hereby agrees to indemnify and hold harmless OAN, its employees, agents, representatives, and affiliates (collectively, the "OAN Indemnitees"), from any claim, action, lawsuit, loss, liability, damages, or costs (including, without limitation, attorney's fees and expenses) [collectively "Damages"]

12/16/97

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threatened against, or incurred by, any OAN Indemnitee relating to or arising out of such OAN Indemnitee's performance (or failure to perform) under this Agreement other than Damages relating to or arising out of OAN Indemnitee's gross negligence or willful misconduct.

4. Customer at the time of execution of this Agreement, warrants and represents to Payee, that: (a) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on its part and is not in conflict with its charter or bylaws, or any statute, judgment, decree, rule or regulation binding upon it, and does not constitute a breach of or default under any indenture, contract or agreement by which it is bound; (b) no consent or approval of any trustee or holder of any indebtedness or obligation, and no consent or approval of, or taking of any other action with respect to, and governmental authority is necessary for execution, delivery, or performance of this Agreement; (c) this Agreement is legal, valid, binding, and enforceable against it in accordance with its terms, subject to enforcement limitations imposed by rules of equity or by bankruptcy or similar laws; (d) it is a corporation validly existing and in good standing under the laws of the jurisdiction of its incorporation and it has adequate corporate power to enter into and perform this Agreement; and (e) there are no actions, suits or proceedings pending or, to its knowledge threatened against or affecting it in any court or before any governmental commission, board or authority which, if adversely determined, will have a materially adverse effect on its ability to perform its obligations.

5. This Agreement shall automatically terminate on January 1, 2000, or without any action on the part of any party hereto upon the effectiveness of the termination of the Billing Services Agreement or the Account Purchase Agreement. Notwithstanding the foregoing, the provisions of paragraph 2 and 3, above, shall survive any such termination.

6. This Agreement shall inure to the benefit of the parties hereto, and their respective valid, legal representatives, successors and assigns; however, neither OAN nor Customer shall have the right to assign its obligations under this Agreement without the written consent of Payee, which consent shall not be unreasonably withheld. No assignment by Payee of its rights and obligations hereunder shall be effective until such time as notice thereof is delivered to each of OAN and Customer.

7. If legal proceedings are initiated to enforce any term or condition of this Agreement, the prevailing party, as determined by a court of competent jurisdiction, shall be entitled to reasonable attorney's fees and costs from any party which did not prevail in such proceedings. The governing law of this Agreement shall be that of California, and the jurisdiction for any proceeding hereunder shall be the state and federal courts of the metropolitan Los Angeles area.

8. Wherever one party is permitted or required to give notice to another party hereunder, such notice will be deemed given if actually delivered or on the third day after posting, if mailed by first-

class, postage prepaid, and addressed to the party receiving such notice at its address set forth in the first paragraph of this Agreement. Any party may at any time change its address for notification purposes by notifying the other party in writing as provided in this paragraph 8 setting forth the new address and the date on which it will become effective.

9. Nothing in this Agreement may be relied upon, or is intended for the benefit of, any party other than Payee, OAN, and Customer.

10. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and there are no understandings or agreements among the parties which are not fully expressed herein. No amendment of this Agreement shall be effective unless performed in a writing signed by the parties hereto.

This Agreement is effective as of this 16<sup>th</sup> day of December, 1997.

Customer

By:


Title:

  
CEO

Payee

By:

Title:

  
Pres

OAN Services, Inc.®

By:

Title:

  
VICE PRES.

12/16/97

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AMENDMENT NUMBER ONE TO THE THIRD PARTY PAYMENT AGREEMENT  
DATED DECEMBER 16, 1997  
BETWEEN  
TELECOMMUNICATIONS SERVICE CENTER,  
NORTEL, INC. AND  
OAN SERVICES INC (THE "AGREEMENT")

This Amendment to the Agreement shall become effective May 7th, 1998,  
("Amendment").

WHEREAS, Customer and Payee, as both terms are defined in the Agreement, desire  
to terminate the payment by OAN to Payee of all Available Funds, as provided in the  
Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Customer and Payee hereby instruct OAN that effective with the execution of  
this Amendment, OAN shall cease the remittance of Available Funds to Payee pursuant  
to the Billing Services Agreement, Account Purchase Agreement, dated January 1,  
1997, and the Agreement.
2. All other terms and conditions of the Agreement shall remain in full force and  
effect. In the event of a conflict between this Amendment and the Agreement, the  
Amendment shall prevail.

Customer:  
By: [Signature]  
Title: CEO

Payee:  
By: [Signature]  
Title: [Signature]

OAN Services, Inc.  
By: [Signature]  
Title: Vice President

Addendum A  
Public Communications, Inc.  
Accutel Communications, Inc.

800 Service & Calling Card

The end user will be billed the following:  
\$4.95 per month billing fee (MRC)  
\$4.95 one time activation fee (NRC)

The parties agree to do revenue sharing as follows:  
PCI will receive 74% of all revenue collected by OAN.  
Accutel will receive 26% of all revenue collected by OAN.  
26.26%

Collected revenue is defined as all revenue collected from monthly recurring fees, installation/setup fees, and usage fees for Residential Customers billed by OAN.

PCI is responsible for:  
All Customer Service costs.  
Chargebacks in excess of moneys collected.  
Bad debt, or LEC/OAN credits in excess of moneys collected.  
Cost of printing and issuing of calling cards.  
Cost of Customer Welcome Letters.

Documentation regarding actual costs to Accutel and customer information will be forwarded to PCI.

Accutel agrees to factor 70% of all billable charges, *or as Accutel receives from OAN.* Accutel will not raise the rates without thirty days written notice to PCI.

IN WITNESS WHEREOF, the parties have executed this Agreement, Addendum A to be effective as of the first day of April, 1998.

Public Communications, Inc.  
By: Myron Newman  
Name: MYRON NEWMAN  
Title: PRES.  
Date: 4/17/98

Accutel Communications, Inc.  
By: Henry H. [Signature]  
Name: [Signature]  
Title: CEO  
Date: 4/22/98

Addendum A 4/10/98

Addendum A

American Network, Inc.

Calling Card

\$4.95 per month billing fee (MRC)  
\$4.95 one time activation fee (NRC)

Disbursement of MRC Fee  
\$1.65 To ACCUTEL  
\$3.30 To ANI

Disbursement of NRC Fee (Activation Charge)  
\$1.65 To ACCUTEL  
\$3.30 To ANI

ANI calling card usage buy rate: \$0.15 per minute.  
ANI calling card platform maintenance cost \$0.01 per month each customer.

ANI responsible for:

Customer service costs, charge backs, credits.

Customers who are credited by the billing company directly, ANI will absorb all cost of the billing company for such charges. Printing and Issuing of calling cards.

Documentation regarding the actual costs to ACCUTEL and customer information will be directly forwarded to ANI.

**Schedule of disbursements:**

70% factoring is available on all billable charges. *or 100 paid by ANI.*  
ACCUTEL'S fee of \$1.65 will be paid from the factored funds. *66%*  
All remaining monies will be paid to ANI as they become available to ACCUTEL from the billing company. *9)*

IN WITNESS WHEREOF, the parties have executed this Agreement, Addendum A, to be effective as of the 1<sup>st</sup> day of April, 1998.

American Network, Inc.

Accutel Communications, Inc.

By: *Ron C. Donnell*

By: *Henry M. Sorci PE*

Name: *Ron C. Donnell*

Name: *[Signature]*

Title: *President*

Title: *CEO*

Phone #: *918-228-9090*

Phone #: *501-243-1773*

Date: *4/22/98*

Date: *4/22/98*

Initials: *RCD*

**BEACH LAW FIRM, P.A.**

ATTORNEYS AT LAW

1281 LADY STREET, SUITE 310  
POST OFFICE BOX 11647  
COLUMBIA, SOUTH CAROLINA 29211-1547

JOHN F. BEACH  
JOHN J. FRINGLE, JR.

May 8, 1998

AREA CODE 803  
TELEPHONE 778-0088  
FACSIMILE 799-8479

**VIA FACSIMILE AND FIRST CLASS MAIL SERVICE**

Ms. Cindi Stone  
Consumer Services Department  
South Carolina  
Public Service Commission  
PO Drawer 11649  
Columbia, SC 29211

RE: Questions from Consumer Service Department to Telecommunications Service Center.

Dear Cindi:

Hal Shankland from Telecommunications Service Center, Inc. ("TSCI") called today to tell me that you have asked them to respond to some questions relating to Accutel's service here in South Carolina. Because of the longstanding relationship between this law firm and TSCI, they have asked for me to provide to you their answers to the following questions:

- 1) What is the relationship between Accutel and TSCI?

**TSCI's Response:** Accutel and TSCI have a contractual relationship through which TSCI takes long distance toll calling detail provided by Accutel, and then rates and bills for the calls.

- 2) Why were certain South Carolina long distance consumers billed for interstate calls by one carrier (Accutel) and billed for intrastate calls made during the same period by another carrier (TSCI).

**TSCI's Response:** OAN and USBI are billing agents who have billing agreements with many local exchange carriers ("LECs"). TSCI bills calls for itself and other interexchange carriers such as Accutel through both OAN and USBI. TSCI received a batch file of calling detail from Accutel that it rated and sent to OAN for billing. TSCI is informed that OAN billed under Accutel's name the interstate calls placed from South Carolina, but rejected the intrastate calls. OAN sent these and other rejected calls back to TSCI in the course of their ongoing business relationship.

These calls are rejected for various, often technical, reasons. One of the reasons

(continued...)

Ms. Cindi Stone  
May 8, 1998  
Page 2

for rejection may occasionally be that OAN cannot verify that a carrier has intrastate authority. This is apparently the reason that OAN rejected the South Carolina intrastate calls TSCI had submitted for Accutel.

Certain TSCI employees have the ongoing job to resubmit rejected calls for re-billing. One of those employees apparently submitted to USBI the intrastate Accutel calls that OAN had rejected. It is unlikely that the employee even noticed the reason OAN had rejected the calls, as it is unusual for rejections to occur because of lack of intrastate authority. The resubmission of these calls seems to have been an innocent mistake by the TSCI employee.

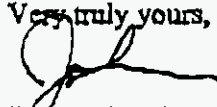
Unfortunately, the employee simultaneously made another mistake, because the intrastate calls were submitted for billing on behalf of TSCI, rather than Accutel. When these calls were submitted, TSCI was in the process of establishing in its computer system new "library codes" for several of its interexchange carrier customers, including Accutel. Instead of sending the batch to USBI for billing under Accutel's library code, the employee mistakenly sent it under TSCI's library code. Again this mistake was an innocent data-entry error by the TSCI employee.

TSCI and Accutel have been working together to resolve every customer inquiry arising out of this unfortunate set of circumstances. TSCI informs me that they have repaid or credited every inquiring customer the full amount of his or her call(s), without question. I personally believe it is important to note that these customers all legitimately used and benefitted from the long distance service. TSCI intends to continue this reimbursement process in the event that additional inquiries are received.

I hope that TSCI has fully answered each of your questions. They are committed to assisting your department in every way so that we can all fully understand how this situation occurred. TSCI has implemented internal procedures to ensure that a similar mistake will not occur in the future. TSCI regrets that these billing problems took place and will take every reasonable step within its power to ensure that the affected customers are satisfied.

With kind regards, I am

Very truly yours,



John F. Beach

JFB/js

cc: Mr. Hal Shankland

C:\APP\OFFICE\WPWIN\WPDOCS\TSC\STONE.LTR