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A LIMITED LIABILITY PARTNERSHIP

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JAKARTA, INDONESIA
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MUMBAI, INDIA
TOKYO, JAPAN

February 28, 2001

010273-TP

Blanca S. Bayo
Director, Division of Public Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Re: Application for Approval to Transfer Ownership and Control of Comm South Companies, Inc. from TracFone Wireless, Inc. to its Affiliate, AM Comm Solutions, LLC and from that Company to ARBROS Communications, Inc. and for Approval, as necessary, of Related Transactions

Dear Ms. Bayo:

Enclosed please find for filing with the Florida Public Service Commission ("Commission") an original and fifteen (15) copies of an application for approval to transfer ownership and control of Comm South Companies, Inc. from TracFone Wireless, Inc. to its affiliate, AM Comm Solutions, LLC and from that company to ARBROS Communications, Inc. and for approval, as necessary, of related transactions.

Please date stamp the enclosed duplicate copy of this filing and return in the enclosed self-addressed postage prepaid envelop. If you have any questions, please feel free to contact us.

Sincerely,

Aspasia A. Paroutsas

Aspasia A. Paroutsas

Encls.

DOCUMENT NUMBER-DATE

02784 MAR-16

FPSC-RECORDS/REPORTING

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Ms. Blanca S. Bayo
Director, Division of Public Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

**Re: Application for Approval to Transfer Ownership and Control of
Comm South Companies, Inc. from TracFone Wireless, Inc. to its
Affiliate, AM Comm Solutions, LLC and from that Company to
ARBROS Communications, Inc. and for Approval, as necessary, of
Related Transactions**

Dear Ms Bayo:

Comm South Companies, Inc. d/b/a Florida Comm South, its parent entities, and ARBROS Communications, Inc. (collectively "Applicants"), by their attorneys, hereby respectfully request authority from the Florida Public Service Commission ("Commission"), pursuant to Fl. Stat. § 364.33, to transfer majority ownership and control of Comm South Companies, Inc. ("Comm South") from TracFone Wireless, Inc. ("TracFone")¹ to TracFone's affiliate, AM Comm Solutions, LLC ("AM Comm"), which will hold approximately 90% of the stock of Comm South only for an instant before that stock and control of Comm South is transferred to an unaffiliated company, ARBROS Communications, Inc. ("ARBROS"), as described more fully below.

Pursuant to a Stock Exchange Agreement ("Agreement") executed by the Applicants, upon consummation of the overall transaction, Comm South will become a wholly owned subsidiary of ARBROS, and AM Comm and its parent Sercotel, S.A. de C.V. ("Sercotel"), or Sercotel's affiliated designee (together "AM Comm Parties"), initially will hold approximately a

¹ Formerly known as Topp Telecom, Inc., which changed its name to TracFone Wireless, Inc. on October 31, 2000.

24.9% interest in ARBROS. In the event that AM Comm exercises its warrants to acquire additional ARBROS shares, as described below, the AM Comm Parties may hold a maximum interest of approximately 45% in ARBROS.² The Applicants do not seek to transfer any operating authority. Both Comm South and ARBROS Communications Licensing Company S.E., LLC ("ACLCLC") will continue to provide intrastate communications service in Florida under their existing authorizations and tariffs. The contemplated transactions will therefore be transparent to customers in Florida.

Applicants submit the following information in support of this Application:

I. The Companies.

Comm South is authorized to provide telecommunications services in many states, and also operates through wholly owned subsidiaries in four states. Prior to the instant transactions, Comm South, a Texas corporation, was 90.1% owned by TracFone, a Florida corporation and leading provider of resold prepaid wireless services, and 9.9% owned by AM Comm, a Delaware limited liability company. TracFone is 97.3% owned by Sercotel, a Mexican corporation, and AM Comm is a wholly owned subsidiary of Sercotel. Sercotel is a wholly owned subsidiary of América Móvil, S.A. de C.V. ("AM"), a Mexican corporation. *Please see the Organizational Chart, Exhibit 1, Sheet 1A, appended hereto.*

Comm South is headquartered at 2909 N. Buckner Boulevard, Suite 800, Dallas, Texas 75228. Comm South is one of the nation's largest resellers of prepaid local telephone service. Together with its operating subsidiaries, Comm South is authorized to provide local telecommunications services virtually nationwide, primarily on a resale basis. At this time, Comm South has pending applications to provide local exchange services (Docket No. 1621-TX) and interexchange services (Docket No. 1649-TI) in the state of Florida. The Commission issued a notice of Proposed Agency Action in both dockets on February 26, 2000 and a consummating order will be issued in both dockets if there will be no protests on March 23, 2001.

ACLCLC, a Delaware limited liability company, is a wholly owned subsidiary of ARBROS Communications S.E., LLC, a Delaware limited liability company that, in turn, is a wholly owned subsidiary of ARBROS Communications, Inc., a privately held Delaware corporation. Prior to the instant transactions, ARBROS was 99.9% owned by Linsang Partners, LLC ("Linsang"), a Delaware limited liability company. *Please see the Organizational Chart, Exhibit 1, Sheet 1B, appended hereto.* ARBROS is headquartered at 1100 Wayne Avenue, 8th Floor, Silver Spring, Maryland 20910. ARBROS, through its subsidiaries, is providing and preparing

² These percentages include shares and warrants issued in connection with the acquisition of Comm South and the financing transactions described below. To the extent that additional approval by this Commission is required for AM Comm to exercise its warrants and increase the AM Comm Parties' interest in ARBROS to approximately 45%, such approval is hereby requested.

to provide voice, data and enhanced services as an integrated communications provider to small and medium-sized businesses primarily in the eastern United States. Specifically, ARBROS is building a network that consists of Class 4/5 central office switches and associated transmission facilities interconnected to the public switched network. Through its operating subsidiaries, ARBROS will offer its customers basic local exchange services, long distance services, CENTREX services, PBX trunks, ISDN, Internet, and data communications services as well as information services, operator services and emergency services.

ARBROS owns several regional LLCs which, in turn, own multiple licensing entities that are authorized to provide telecommunications services in the various states. In Florida, ACLC received its authority to provide local services on June 30, 2000 in Docket No. 000360-TX, Certificate No. 7453 and Authority No. T-00-0528. ACLC and the other licensing subsidiaries are authorized to provide telecommunications service in the following states: Alabama, Connecticut, Delaware, D.C., Florida, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont and Virginia. Applications are pending in Arkansas, California, Georgia, Maine, Minnesota, Missouri, Nebraska and Oklahoma. ARBROS companies have commenced service in D.C., Pennsylvania, and Virginia.

II. Designated Contacts.

The designated contacts for questions concerning this Application are:

For Comm South:

Glenn Richards, Esq.
Susan Hafeli, Esq.
SHAW PITTMAN
2300 N Street, NW
Washington, DC 20037
Tel. (202) 663-8000
Fax (202) 663-8007

For ARBROS:

Aspasia A. Paroutsas, Esq.
KELLEY DRYE & WARREN LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
Tel. (202) 955-9881
Fax (202) 955-9792

Copies of any correspondence also should be sent to the following designated representatives of the Applicants:

For Comm South:

Rick Brown
Vice President, Carrier Relations and
and Regulatory Affairs
COMM SOUTH COMPANIES, INC.
2909 N. Buckner Blvd. Suite 800
Dallas, Texas 75228
Tel. (972) 690-9955

For ARBROS:

Robert F.X. Condon
Vice President of Regulatory
and External Affairs
ARBROS COMMUNICATIONS, INC.
1100 Wayne Ave. 8th Fl.
Silver Spring, Maryland 20910
Tel. (301) 960-0544

Fax (972) 690-9959

Fax (301) 650-2465

III. Description of the Transactions.

The essence of this transaction is ARBROS Communications, Inc.'s acquisition of all of the stock of Comm South Companies, Inc., with the end result that Comm South Companies, Inc. and its subsidiaries will join the existing subsidiaries of ARBROS in providing telecommunications service to the public. Because the services of Comm South and its subsidiaries are very different from those currently provided by ARBROS, ARBROS presently intends to maintain Comm South as a separate entity. Therefore, the transactions will be transparent to customers.

As provided in the Agreement, the acquisition of Comm South will be completed in a multi-step process whereby all of Comm South's outstanding stock will be exchanged for stock and warrants in ARBROS. Ultimately, Comm South will be a wholly owned subsidiary of ARBROS. As a preliminary step, within five days of the execution of the Agreement, ARBROS will acquire the 9.9% of Comm South's stock previously owned by AM Comm in exchange for 2,654,155 shares of ARBROS stock (approximately 4.8% of ARBROS's outstanding stock.)³ This first step of the transaction does not involve any transfer of control of Comm South or ARBROS and does not require regulatory approval.

The second step will occur at the closing of the overall transaction when, for business reasons, the current owners of Comm South will further restructure the ownership of Comm South by having AM Comm acquire from TracFone the 90.1% of the Comm South shares TracFone owns. The parent companies, Sercotel and AM, will remain the same. Upon acquiring the shares from TracFone, AM Comm immediately will transfer them to ARBROS, as discussed below. *Please see Exhibit 1, Sheet 2*, appended hereto. Because Comm South will never operate under AM Comm's control, it would be administratively inefficient to consider AM Comm's qualifications to replace TracFone as the owner of Comm South.⁴ To the extent this instantaneous, intermediate *pro forma* restructuring of the ownership of Comm South requires Commission approval, such approval is hereby requested.

In the third step, to complete the process of Comm South becoming a wholly owned subsidiary of ARBROS, ARBROS will acquire the remaining 90.1% of Comm South's stock held by AM Comm in exchange for issuing AM Comm 5,718,952 shares of ARBROS stock and ten year warrants to purchase another 31,963,232 shares at \$0.001 per share. *Please see Exhibit 1, Sheets 3 and 4*, appended hereto. This step of the process also will occur at the closing of the

³ ARBROS has only common stock issued and outstanding.

⁴ As Comm South has its own management, and TracFone and AM Comm are affiliates under the common control of Sercotel, there would be no meaningful change in any event.

overall transaction subsequent to the satisfaction or waiver of certain conditions to the closing contained in the Agreement, including receipt of necessary regulatory approvals.

As the final step, this transaction also involves certain additional financing for ARBROS.⁵ Sercotel has made an unsecured loan to ARBROS, which will be converted at the closing of the acquisition of Comm South into 13,404,826 shares of ARBROS common stock (15.3%). Linsang also has made an unsecured interest-free loan to ARBROS and that loan, and an earlier loan, will be converted into 13,404,826 shares of ARBROS common stock at the closing of the acquisition of Comm South.⁶ Because these unsecured loans have been made to the parent company, ARBROS, rather than to the utility entity, no approval of their terms is required by this Commission. Finally, ARBROS has made an unsecured short term loan to Comm South. This loan is not convertible into stock, but amounts due by Comm South under the loan may be offset against the obligations of ARBROS to Sercotel under the Sercotel loan described above.

By virtue of this share exchange and additional ARBROS shares issued in connection with the financing transaction described above, the AM Comm Parties will initially own approximately 24.9% of the ARBROS common stock outstanding after completion of the overall transaction. In the event that AM Comm exercises some or all of its warrants, as described above, the AM Comm Parties may hold up to approximately a 45% interest in ARBROS. Certain states in which ARBROS's subsidiaries currently are authorized to provide telecommunications services may require approval for entities such as AM Comm and Sercotel to acquire 10% or more of ARBROS's common stock (or some higher threshold percentage) even though ARBROS itself is not a utility and its current controlling shareholder, Linsang, will continue initially to own a majority of ARBROS's stock.⁷ In the event that approval should be required for the AM Comm Parties to acquire these interests in ARBROS, it is hereby respectfully requested.

In addition to the foregoing loans, as a condition to ARBROS's obligation to close the Comm South acquisition, ARBROS must have obtained at closing additional financing, which shall have been arranged by AM and, if required, guaranteed by AM, on terms acceptable to ARBROS. Lenders are expected to include one or more banks or other financial institutions and/or parties affiliated with AM, and any such loan may be secured by various assets of

⁵ Additional information about these financing transactions is contained in *Exhibit 3*, submitted under seal. Because the amounts and terms of these loans are confidential and would be helpful to competitors, the Applicants respectfully request that *Exhibit 3* be accorded confidential treatment.

⁶ *Exhibit 2* is a chart summarizing the ownership of ARBROS after the consummation of the transactions described herein.

⁷ Approximately 75% after the closing and approximately 55% if the warrants are exercised.

ARBROS and its subsidiaries and/or their guarantees. Alternatively, ARBROS may issue notes for all or part of the required amounts.

Because all or a portion of any loan to ARBROS from third parties may be secured by the assets and/or guarantees of ARBROS's subsidiaries authorized as utilities, including Comm South and its subsidiaries, notification or regulatory approval for this aspect of the transaction may be required in some states.⁸ The funds from this financing, whether from loans or notes, are not designated for use in any particular state, but will provide funds for the expansion and operation of the entire combined company throughout the United States. The financing would serve the public interest by enhancing the combined company's ability to compete in the telecommunications marketplace and to provide new and improved services to existing and new customers.⁹ It is our understanding that no formal approval or notification to this Commission is required in connection with these financing arrangements; however, should our understanding be incorrect, it is respectfully requested that this application be accepted as the required notification or application.

IV. Qualifications of ARBROS Communications, Inc.

After the consummation of the transactions described herein, Comm South and its licensed utility subsidiaries and ARBROS will continue to operate under their same names, tariffs and operating authorities. Thus, the transfer of control will be transparent to customers and will not have any adverse impact on them. The only change is in ownership. ARBROS is financially, managerially and technically qualified to assume ultimate control of Comm South.¹⁰ This Commission previously found that ACLC is qualified to provide local exchange telecommunications services when it granted ACLC a certificate on June 30, 2000. Thus, ARBROS's qualifications are a matter of record before this Commission.

ARBROS is financially qualified to assume control of Comm South. The most recent audited financial statements of ARBROS Communications, Inc. and subsidiaries are submitted herewith *under seal* as *Exhibit 5*. Because ARBROS is a privately held corporation, its financial status is sensitive and not a matter of public record. Thus, Applicants respectfully request that its

⁸ Issuance of unsecured notes by ARBROS would not require state commission review because ARBROS is not itself a utility entity.

⁹ Because ARBROS is a non-dominant carrier, it is not subject to rate of return regulation and its specific capital structure should not be a matter of concern to the Commission. In addition, because of the highly competitive environment in which the Company operates, the rates charged customers are subject to market discipline and the services offered are duplicated by other carriers. As a result, the source of funds and capital structure of ARBROS would have little effect on customers in Florida or elsewhere.

¹⁰ A copy of the Amended and Restated Certificate of Incorporation of ARBROS Communications, Inc. is appended hereto as *Exhibit 4*.

financials filed *under seal* as *Exhibit 5* be accorded confidential treatment. Although it is a relatively new enterprise, ARBROS has the necessary financial resources to provide facilities-based and resold local exchange and interexchange telecommunications services and to finance its operations in order to maintain the provision of services. Specifically, as demonstrated by its financial statements, ARBROS has been able to raise privately the funding necessary for the construction and operation of its telecommunications network. Also, as mentioned above, ARBROS will be receiving substantial additional capital and a substantial loan to fund the expansion and continued operation of its utility subsidiaries, including those being acquired in the Comm South transaction.

ARBROS is led by a highly qualified team of management personnel, all of whom have extensive backgrounds in telecommunications. Brief biographies of the key management personnel are appended hereto as *Exhibit 6*. The management team has decades of experience in all areas of the telecommunications industry, including financial management, engineering, sales, strategic planning, regulatory and operations. The team is drawn from such companies as Verizon, AT&T, US One Communications, Ameritech, Fujitsu and TCG. While ARBROS's management team is certainly qualified to operate Comm South, it is contemplated that many in Comm South's current management team will continue to operate that company's business under the overall direction of ARBROS's senior executives. The contacts for customer and Commission inquiries will remain the same for both ARBROS and Comm South after the transfer of control:

Robert F.X. Condon
Vice President of Regulatory and External Affairs
ARBROS COMMUNICATIONS, INC.
(301) 960-0554

and

Rick Brown
Vice President, Carrier Relations and Regulatory Affairs
COMM SOUTH COMPANIES, INC.
(972) 690-9955

V. Public Interest Analysis.

Approving the transfer of control of Comm South from TracFone to AM Comm, and from AM Comm to ARBROS is in the public interest. The addition of Comm South to the ARBROS family of companies will enhance both Comm South's and ARBROS's ability to compete in the market for telecommunications services in Florida and elsewhere.¹¹ The Applicants will benefit from increased economies of scale that will permit them to operate more

¹¹ Moreover, Comm South's former owners, of course, will continue to hold a substantial stake in Comm South through their ownership interest in ARBROS.

efficiently and thus to compete more effectively. Moreover, through the financing arrangements discussed herein, Comm South and ARBROS both will have access to the greater financial resources they need to introduce new products and services and to respond to the competitive telecommunications environment in Florida and across the nation. The ownership changes and the financing transactions described herein are not expected to directly affect in any way ARBROS's or Comm South's rates or services. Over time, consumers in Florida will benefit from a greater number of product and service options as well as more efficient prices resulting from the enhanced competitive ability of the combined company.

WHEREFORE, Comm South Companies, Inc., its parent entities, and ARBROS Communications, Inc. respectfully request that the Commission (1) authorize, to the extent necessary, the *pro forma* transfer of control of Comm South from TracFone to AM Comm; (2) authorize the transfer of control of Comm South from AM Comm to ARBROS; and (3) authorize such other and further relief as may be necessary to carry out the transactions described herein.

Respectfully submitted,

COMM SOUTH COMPANIES, INC.
D/B/A FLORIDA COMM SOUTH

By: Glenn Richards / AAP
Glenn Richards, Esq.
Susan Hafeli, Esq.
SHAW PITTMAN
2300 N Street, N.W.
Washington, D.C. 20037

Its Attorneys

ARBROS COMMUNICATIONS, INC.

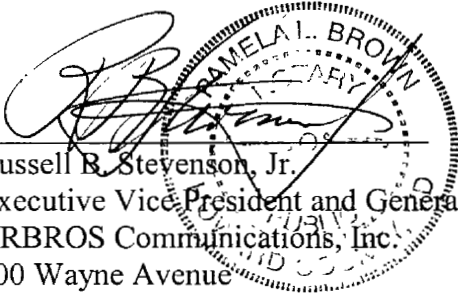
By: Aspasia A Paroutsas
James Freeman, Esq.
Melissa Conway, Esq.
Aspasia A. Paroutsas, Esq.
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D. C. 20036

Its Attorneys

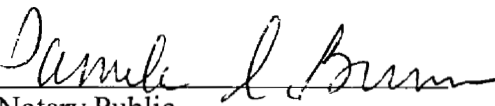
Dated: February 28, 2001

VERIFICATION

I, Russell B. Stevenson, Jr., am authorized to represent ARBROS Communications, Inc. and its affiliates, and to make this verification on their behalf. The statements in the foregoing document relating to ARBROS Communications, Inc. and its affiliates, except as otherwise specifically attributed, are true of my own knowledge, except as to matters that are stated herein on information on belief, and to those matters, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.


Russell B. Stevenson, Jr.
Executive Vice President and General Counsel
ARBROS Communications, Inc.
100 Wayne Avenue
Silver Spring, MD 20910

Subscribed and sworn to before me this 15th day of January, 2001.


Notary Public

My Commission expires: _____
PAMELA L. BROWN
Notary Public - State of Maryland
My Commission Expires June 12, 2004

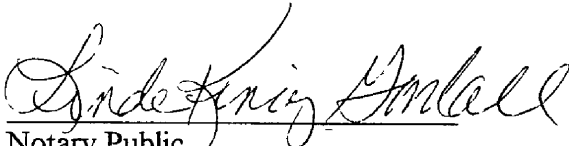
VERIFICATION

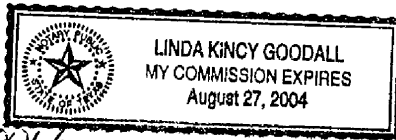
I, Dan L. Barth am authorized to represent Comm South Companies, Inc. and its affiliates, and to make this verification on their behalf. The statements in the foregoing document relating to Comm South Companies, Inc. and its affiliates, except as otherwise specifically attributed, are true of my own knowledge, except as to matters that are stated herein on information on belief, and to those matters, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.



name Daniel L. Barth
title Interim President
address 2909 N. Buckner Blvd.
Suite 800
Dallas, Texas 75228

Subscribed and sworn to before me this 7th day of February, 2001.


Notary Public



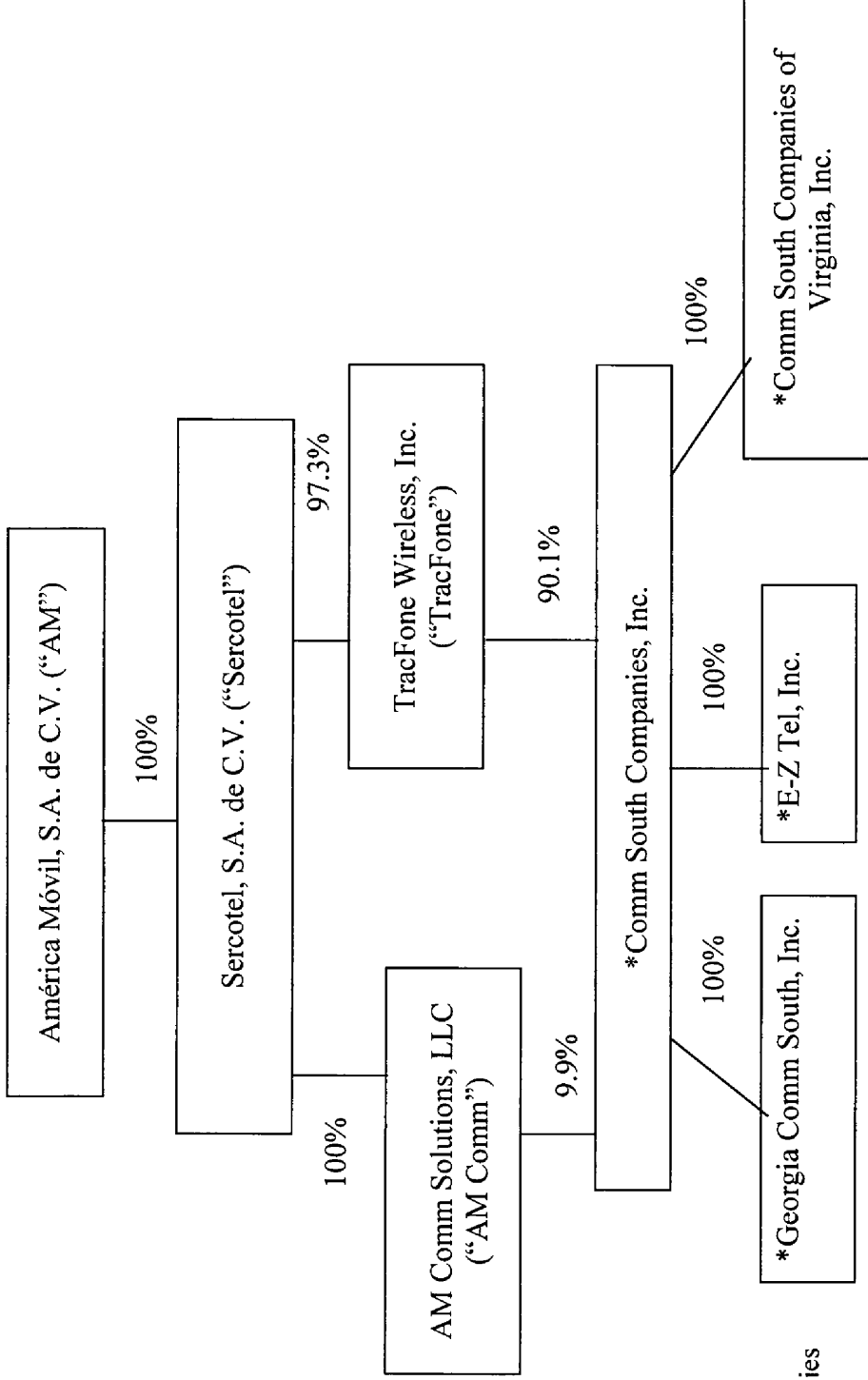
My Commission expires: 8-27-2004

EXHIBIT 1

CORPORATE ORGANIZATIONAL CHARTS

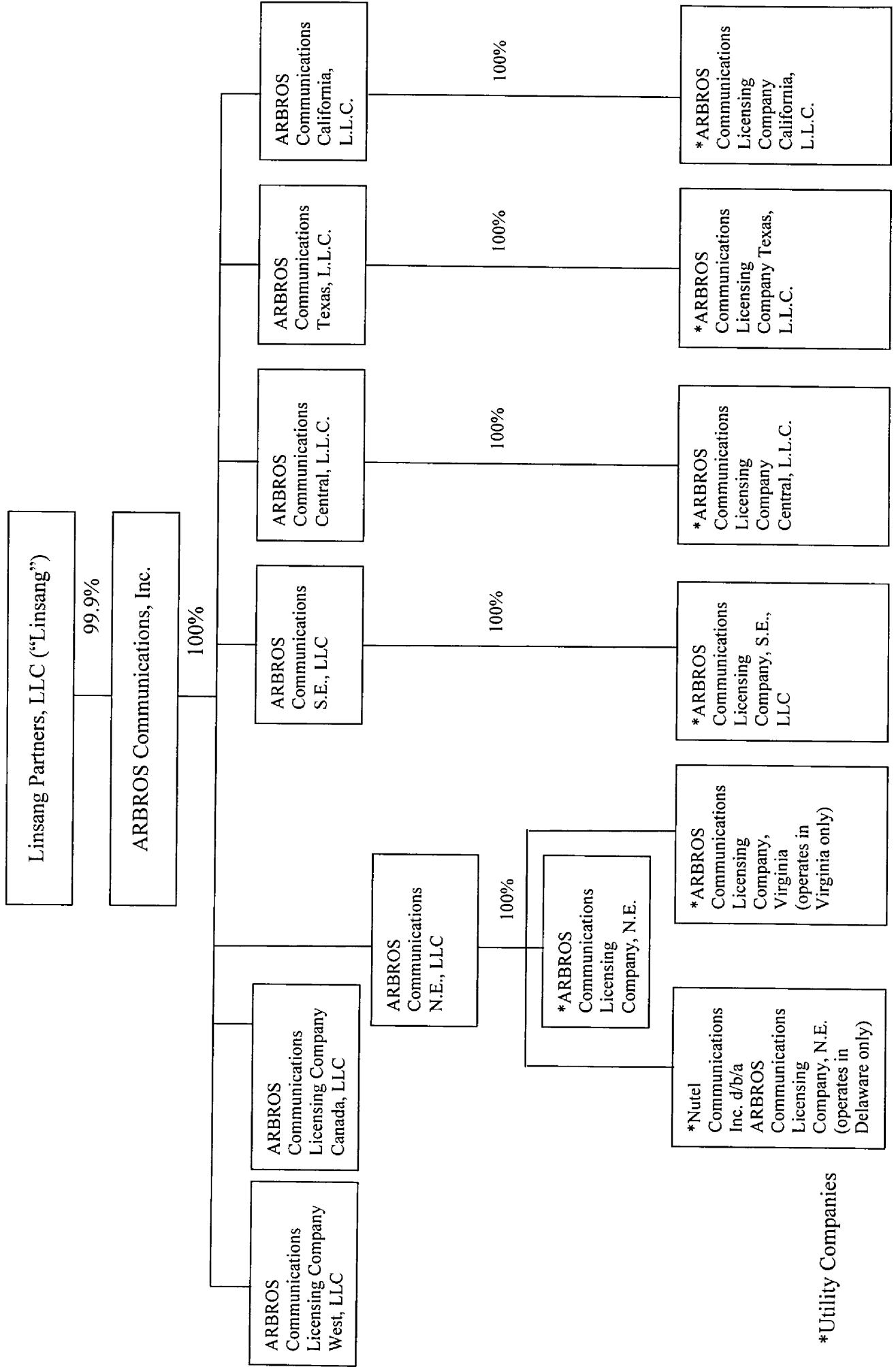
- SHEET 1A - Pre-transaction corporate structure of Comm South**
- SHEET 1B - Pre-transaction corporate structure of ARBROS**
- SHEET 2 - *Pro Forma* Restructuring of Comm South**
- SHEET 3 - ARBROS Acquisition of Comm South**
- SHEET 4 - Post-transaction corporate structure**

COMM SOUTH COMPANIES, INC (PRE-TRANSACTION)



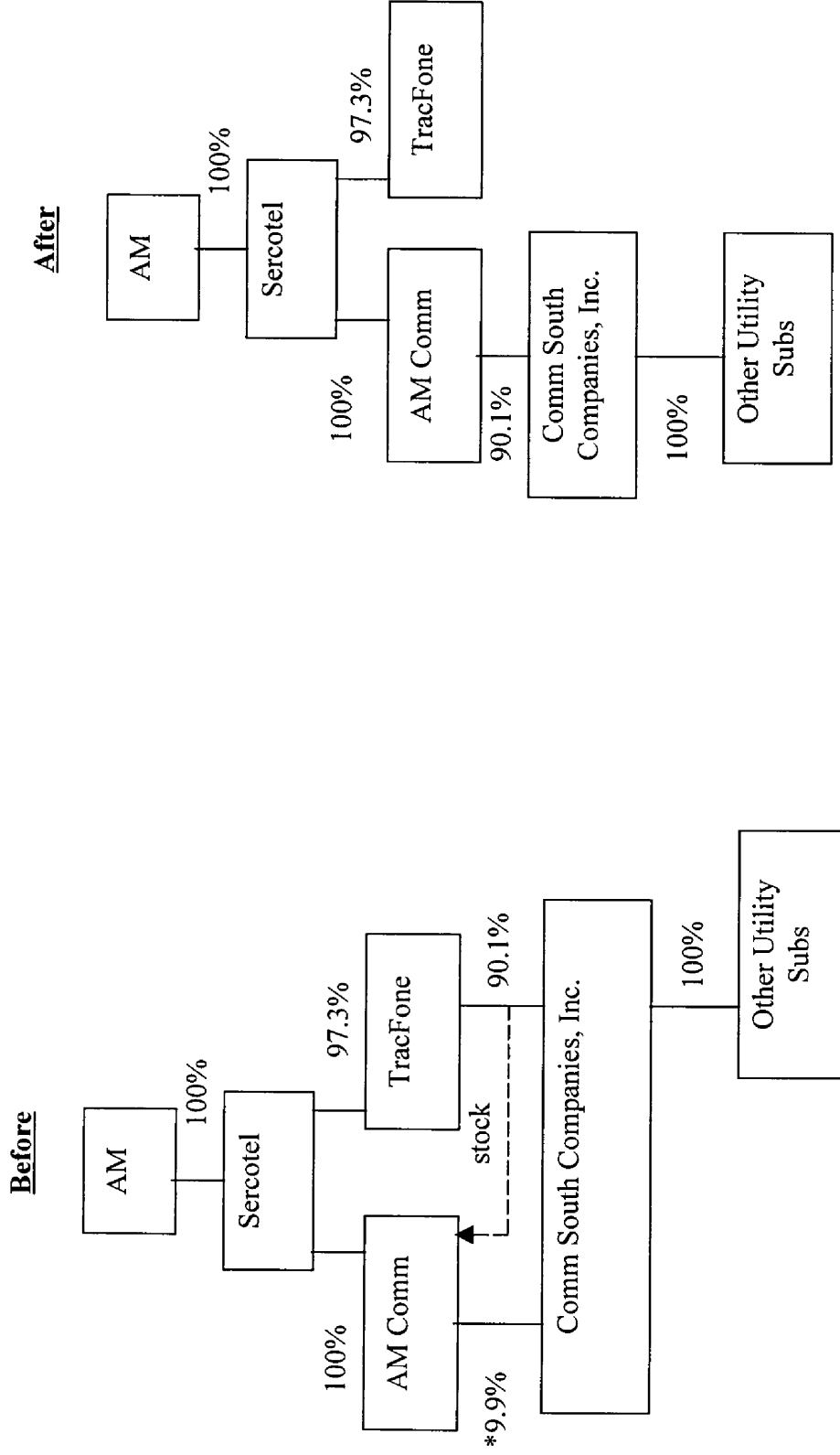
* Utility Companies

**ARBROS COMMUNICATIONS, INC.
(PRE-TRANSACTION)**



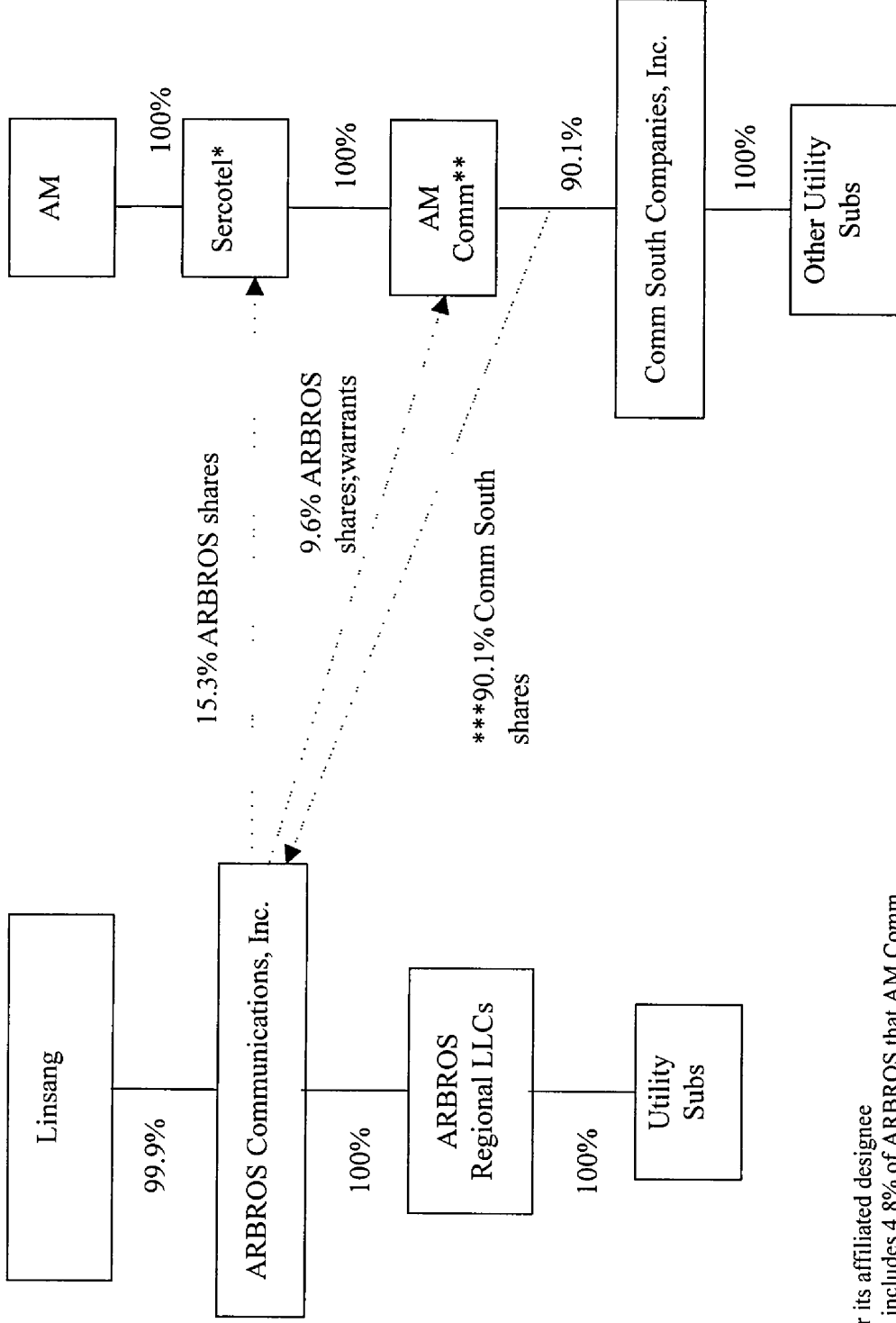
*Utility Companies

COMM SOUTH RESTRUCTURING (PRO FORMA)
 (Dashed line indicates transaction)



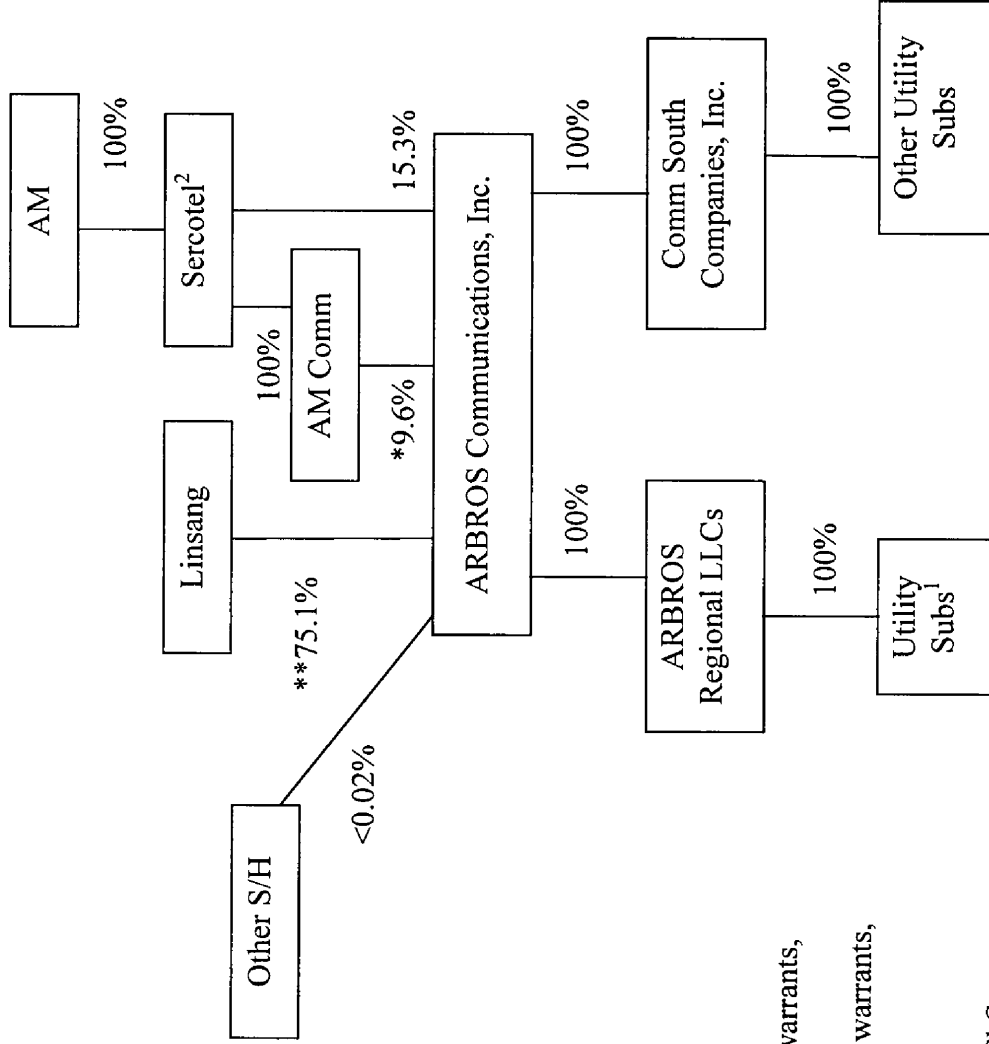
*ARBROS is acquiring this 9.9% interest prior to the closing of the transfer of control (see p. 4)

ARBROS ACQUISITION OF COMM SOUTH
 (Dashed line indicates transactions)



*Sercotel, or its affiliated designee
 **The 9.6% includes 4.8% of ARBROS that AM Comm previously acquired (see p. 4)
 ***ARBROS previously acquired 9.9% of Comm South stock (see p. 4)

POST-TRANSACTION CONFIGURATION



*Upon exercise of the warrants, up to 29.6%
 **Upon exercise of the warrants, down to 55%.

¹ Including ACLC
² Sercotel, or its affiliated designee.

EXHIBIT 2

ARBROS COMMUNICATIONS, INC. SHARE OWNERSHIP

ARBROS COMMUNICATIONS, INC. SHARE OWNERSHIP

	<u>Linsang</u>	<u>AM + Subs</u>		<u>Other S/H</u>	
	Common	Common	Warrants	Common	Options
Currently Outstanding.....	52,343,148	--	--	17,100	19,176,300
Investment by Sercotel	--	13,404,826	--	--	--
Investment by Linsang	13,404,826	--	--	--	--
Acquisition of CommSouth	--	8,373,107	31,963,232	--	--
Total	65,747,974	21,777,933	31,963,232	17,100	19,176,300

FILED UNDER SEAL

EXHIBIT 3

**DESCRIPTON OF
FINANCING TRANSACTIONS**

FILED UNDER SEAL

EXHIBIT 4

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF ARBROS COMMUNICATIONS, INC.

State of Delaware
Office of the Secretary of State PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "ARBROS COMMUNICATIONS, INC.", FILED IN THIS OFFICE ON THE THIRD DAY OF JANUARY, A.D. 2001, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



Harriet Smith Windsor
Secretary of State

2994533 8100

010004731

AUTHENTICATION: 0894829

DATE: 01-04-01

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ARBROS COMMUNICATIONS, INC.

(Pursuant to Sections 242 and 245 of the General
Corporation Law of the State of Delaware)

ARBROS Communications, Inc., a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is ARBROS Communications, Inc. The Corporation's original certificate of incorporation was filed with the Secretary of State of the State of Delaware on January 15, 1999, under the name NuTel Communications, Inc. (the "Certificate").
2. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, and having been adopted in accordance therewith, this Amended and Restated Certificate of Incorporation amends and restates the provisions of the Certificate, as heretofore amended. The amendments contained herein have been duly adopted by the stockholders of the Corporation in accordance with Section 228 of the General Corporation Law of the State of Delaware.
3. Each share of the Corporation's Common Stock, par value \$.01 per share, issued and outstanding immediately prior to the filing of this Amended and Restated Certificate of Incorporation (the "Old Common Stock"), shall automatically and without any action on the part of the holder thereof be reclassified and changed into one share of the Corporation's Common Stock, par value \$.001 per share (the "New Common Stock"). Each holder of a certificate or certificates, which immediately prior to the filing of this Amended and Restated Certificate of Incorporation represented outstanding shares of Old Common Stock (the "Old Certificates," whether one or more), shall be entitled to receive, upon surrender of such Old Certificates to the Corporation for cancellation, a certificate or certificates (the "New Certificates," whether one or more) representing the number of whole shares of the New Common Stock into which and for which the shares of the Old Common Stock formerly represented by such Old Certificates so surrendered are reclassified under the terms hereof. From and after the filing of this Amended and Restated Certificate of Incorporation, Old Certificates shall represent only the right to receive New Certificates pursuant to the provisions hereof. No certificates or scrip representing fractional share interests in New Common Stock will be issued, no cash payment will be made for fractional share interests in New Common Stock, and no such fractional share interest will entitle the holder thereof to vote, or to any rights of a shareholder of the Corporation. If more than one Old Certificate shall be surrendered at one time for the account of the same stockholder, the number of full shares of New Common Stock for which New Certificates shall be issued shall be computed on the basis of the aggregate number of shares represented by the Old Certificates so

surrendered. If any New Certificate is to be issued in a name other than that in which the Old Certificates surrendered for exchange are issued, the Old Certificates so surrendered shall be properly endorsed and otherwise in proper form for transfer, and the person or persons requesting such exchange shall affix any requisite stock transfer tax stamps to the Old Certificates surrendered, or provide funds for their purchase, or establish to the satisfaction of the Corporation that such taxes are not payable.

4. The text of the Certificate, as heretofore amended, is hereby amended and restated to read in its entirety as follows:

ARTICLE I
NAME

The name of the Corporation is ARBROS Communications, Inc.

ARTICLE II
REGISTERED AGENT

The Corporation's registered office in the State of Delaware is located at 15 East North Street in the County of Kent, in the City of Dover. The name of its registered agent is HIQ Corporate Services Inc.

ARTICLE III
PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware (the "DGCL").

ARTICLE IV
CAPITAL STOCK

A. **Authorized Shares.** The total number of shares of all classes of capital stock which the Corporation shall have the authority to issue is 250,000,000 shares, divided into two classes of which (i) 200,000,000 shares of par value \$.001 per share shall be designated Common Stock ("Common Stock"), and (ii) 50,000,000 shares of par value \$.001 per share shall be designated Preferred Stock ("Preferred Stock").

B. **Common Stock.** Except as otherwise required by law or expressly provided in this certificate of incorporation, as amended from time to time, each share of Common Stock shall have the same powers, rights and privileges and shall rank equally, share ratably and be identical in all respects as to all matters.

1. **Dividends.** Subject to the rights of the holders of Preferred Stock, and to the other provisions of this certificate of incorporation, as amended from time to time, holders of Common Stock shall be entitled to receive equally, on a per share basis, such dividends and other distributions in cash, securities or other property of the Corporation as may be declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor.

2. Voting Rights. At every annual or special meeting of stockholders of the Corporation, every holder of Common Stock shall be entitled to one vote, in person or by proxy, for each share of Common Stock standing in his name on the books of the Corporation.

3. Liquidation, Dissolution or Winding Up. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, after payment or provision for payment of the Corporation's debts and amounts payable upon shares of Preferred Stock entitled to a preference, if any, over holders of Common Stock upon such dissolution, liquidation or winding up, the remaining net assets of the Corporation shall be distributed among holders of shares of Common Stock equally on a per share basis. A merger or consolidation of the Corporation with or into any other corporation or other entity, or a sale or conveyance of all or any part of the assets of the Corporation (which shall not in fact result in the liquidation of the Corporation and the distribution of assets to its stockholders) shall not be deemed to be a voluntary or involuntary liquidation or dissolution or winding up of the Corporation within the meaning of this Paragraph B.3 (except in respect of shares of Preferred Stock to the extent that the certificate of designation governing such shares expressly provides otherwise).

C. Preferred Stock. The Board of Directors is authorized, subject to limitations prescribed by law, to provide by resolution or resolutions for the issuance of shares of Preferred Stock in one or more series, to establish the number of shares to be included in each such series, and to fix the voting powers (if any), designations, powers, preferences, and relative, participating, optional or other rights, if any, of the shares of each such series, and any qualifications, limitations or restrictions thereof. Irrespective of the provisions of Section 242(b)(2) of the DGCL, the number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote, without the separate vote of the holders of the Preferred Stock as a class.

ARTICLE V BOARD OF DIRECTORS

A. Management. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not by statute or this certificate of incorporation, as amended from time to time, directed or required to be exercised or done by the stockholders.

B. Number of Directors. The number of directors of the Corporation shall be fixed from time to time by, or in the manner provided in, the Bylaws; provided, however, that the number of directors shall not be less than three.

C. Newly-Created Directorships and Vacancies. Subject to the rights of the holders of any class of Common Stock or series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or

any other cause may be filled by the Board of Directors, provided that a quorum is then in office and present, or by a majority of the directors then in office, if less than a quorum is then in office, or by the sole remaining director.

D. Rights of Holders of Preferred Stock. Notwithstanding the foregoing provisions of this Article V, whenever the holders of one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately or together by series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorship shall be governed by the rights of such Preferred Stock as set forth in the certificate of designations governing such series.

E. Written Ballot Not Required. Elections of directors need not be by written ballot unless the By-laws of the Corporation shall otherwise provide.

F. By-laws. The Board of Directors is expressly authorized to adopt, amend or repeal the by-laws of the Corporation. Any by-laws made by the directors under the powers conferred hereby may be amended or repealed by the directors or by the stockholders.

ARTICLE VI **LIMITATION OF LIABILITY**

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director; *provided, however*, that the foregoing shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is hereafter amended to permit further elimination or limitation of the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended. Any repeal or modification of this Article VI shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE VII **INDEMNIFICATION**

Each person who was or is made a party or is threatened to be made a party to or is involved (including, without limitation, as a witness) in any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation or of a partnership, limited liability company, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "Indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director or officer or in any other capacity while so serving, shall be indemnified and held harmless by the Corporation to the full extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any

such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), or by other applicable law as then in effect, against all expense, liability and loss (including attorneys' fees and related disbursements, judgments, fines, excise taxes or penalties under the Employee Retirement Income Security Act of 1974, as amended from time to time ("ERISA"), penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such Indemnitee in connection therewith, and such indemnification shall continue as to a person who has ceased to be a director, officer, partner, member or trustee and shall inure to the benefit of his or her heirs, executors and administrators. Each person who is or was serving as a director or officer of a subsidiary of the Corporation shall be deemed to be serving, or have served, at the request of the Corporation.

A. Procedure. Any indemnification (but not advancement of expenses) under this Article VII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL, as the same exists or hereafter may be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment). Such determination shall be made with respect to a person who is a director or officer at the time of such determination (a) by a majority vote of the directors who were not parties to such proceeding (the "Disinterested Directors"), even though less than a quorum, (b) by a committee of Disinterested Directors designated by a majority vote of Disinterested Directors, even though less than a quorum, (c) if there are no such Disinterested Directors, or if such Disinterested Directors so direct, by independent legal counsel in a written opinion, or (d) by the stockholders.

B. Advances for Expenses. Expenses (including attorneys' fees, costs and charges) incurred by a director or officer of the Corporation in defending a proceeding shall be paid by the Corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay all amounts so advanced in the event that it shall ultimately be determined that such director or officer is not entitled to be indemnified by the Corporation as authorized in this Article VII. The majority of the Disinterested Directors may, in the manner set forth above, and upon approval of such director or officer of the Corporation, authorize the Corporation's counsel to represent such person, in any proceeding, whether or not the Corporation is a party to such proceeding.

C. Procedure for Indemnification. Any indemnification or advance of expenses (including attorney's fees, costs and charges) under this Article VII shall be made promptly, and in any event within 60 days upon the written request of the director or officer (and, in the case of advance of expenses, receipt of a written undertaking by or on behalf of Indemnitee to repay such amount if it shall ultimately be determined that Indemnitee is not entitled to be indemnified therefor pursuant to the terms of this Article VII). The right to indemnification or advances as granted by this Article VII shall be enforceable by the director or officer in any court of competent jurisdiction, if the Corporation denies such request, in whole or in part, or if no disposition thereof is made within 60 days. Such person's costs and expenses incurred in connection with successfully establishing his/her right to indemnification, in whole or in part, in

any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for the advance of expenses (including attorney's fees, costs and charges) under this Article VII where the required undertaking, if any, has been received by the Corporation) that the claimant has not met the standard of conduct set forth in the DGCL, as the same exists or hereafter may be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, its independent legal counsel and its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he/she has met the applicable standard of conduct set forth in the DGCL, as the same exists or hereafter may be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), nor the fact that there has been an actual determination by the Corporation (including its Board of Directors, its independent legal counsel and its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

D. Other Rights: Continuation of Right to Indemnification. The indemnification and advancement of expenses provided by this Article VII shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any law (common or statutory), by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his/her official capacity and as to action in another capacity while holding office or while employed by or acting as agent for the Corporation, and shall continue as to a person who has ceased to be a director or officer, and shall inure to the benefit of the estate, heirs, executors and administrators of such person. All rights to indemnification under this Article VII shall be deemed to be a contract between the Corporation and each director or officer of the Corporation who serves or served in such capacity at any time while this Article VII is in effect. Any repeal or modification of this Article VII or any repeal or modification of relevant provisions of the DGCL or any other applicable laws shall not in any way diminish any rights to indemnification of such director or officer or the obligations of the Corporation arising hereunder with respect to any proceeding arising out of, or relating to, any actions, transactions or facts occurring prior to the final adoption of such modification or repeal. For the purposes of this Article VII, references to "the Corporation" include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation, so that any person who is or was a director or officer of such a constituent corporation or is or was serving at the request of such constituent corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this Article VII, with respect to the resulting or surviving corporation, as he would if he/she had served the resulting or surviving corporation in the same capacity.

E. Insurance. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was or has agreed to become a director or officer of the

Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him or on his behalf in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VII, *provided, however*, that such insurance is available on acceptable terms, which determination shall be made by a vote of a majority of the Board of Directors.

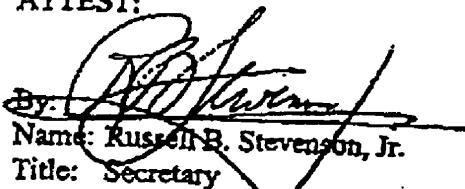
F. Savings Clause. If this Article VII or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each person entitled to indemnification under the first paragraph of this Article VII as to all expense, liability and loss (including attorneys' fees and related disbursements, judgments, fines, ERISA excise taxes and penalties, penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such person and for which indemnification is available to such person pursuant to this Article VII to the full extent permitted by any applicable portion of this Article VII that shall not have been invalidated and to the full extent permitted by applicable law.

ARTICLE VIII AMENDMENT

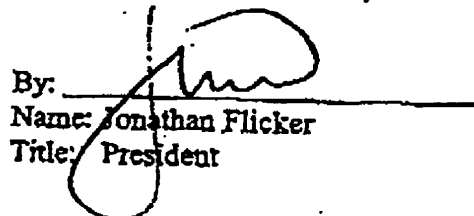
The Corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, as amended from time to time, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its President and Secretary as of this 26th day of December, 2000.

ATTEST:

By: 
Name: Russell B. Stevenson, Jr.
Title: Secretary

ARBROS Communications, Inc.

By: 
Name: Jonathan Flicker
Title: President

FILED UNDER SEAL

EXHIBIT 5

**FINANCIAL STATEMENTS OF
ARBROS COMMUNICATIONS, INC.**

FILED UNDER SEAL

EXHIBIT 6

MANAGEMENT BIOS ARBROS COMMUNICATIONS, INC.

Jonathan S. Flicker, CEO, President, and Director

Mr. Flicker has more than 14 years of experience in executive-level management, primarily in the areas of strategic planning, corporate finance, operations, marketing and analysis. Before joining ARBROS Communications, Mr. Flicker was the Chief Operating Officer of CrossMedia Networks Incorporated, a service organization that enabled voice-mail retrieval via standard telecommunications devices. In addition to having held management positions at Time Warner Inc., and National Geographic Society, Mr. Flicker was Vice President of Marketing Services at Time Life, Inc. where he managed the nationwide telemarketing group as well as the marketing operations functions for the Books, Video, Music and Children's product lines. He also worked for the Bertelsmann Music Group, initially as senior director of New Business Development for the Direct Marketing Division and later as Vice President of Customer Service and Operations. Mr. Flicker started his career at Morgan Stanley. He holds a BS in Cognitive Science and an MS in Quantitative Analysis from the University of Kansas.

Sandra Hallameyer, Senior Vice President, Administration

Ms. Hallameyer has more than 30 years of experience in directing administrative functions, specializing in the management of human resources and labor, information systems, facilities and operations in a variety of businesses and industries. Prior to joining ARBROS, she served as Senior Vice President of Administration for the National Geographic Society, providing operational overview and strategic direction for its administrative, membership and internal audit functions. From 1969 to 1980, Ms. Hallameyer held positions in change management, human relations and training in the insurance and health care industries before joining The Sun newspaper in Baltimore, Maryland, where she served as Director of Human Resources and later as Vice President of Operations. Ms. Hallameyer holds a bachelor's degree in Psychology from North Texas University and a Masters in Business degree from Stanford University.

Don Helms, Senior Vice President, Operations

Mr. Helms has over 30 years of telecommunications experience in a variety of senior and executive level positions with AT&T and Teleport Communications Group (TCG). Prior to joining ARBROS, Mr. Helms served as Vice President of the Network Management Center (NMC) for AT&T Local Services, with responsibility for nationwide customer trouble resolution. Under his leadership, the NMC expanded in size and functionality to meet the growth in services and commitments to new AT&T product offerings. Previously, Mr. Helms served as Regional Vice President of Local Service Operations for AT&T's (formerly TCG) Eastern Region, where he enhanced the operations capability and service performance for the eastern half of the United States. Prior to this, Mr. Helms served as Vice President of Corporate Process where he was charged with defining processes that would achieve the highest level of performance efficiency and Vice President of Engineering with responsibilities including transmission and switching equipment, network planning, network design and infrastructure deployment. Mr. Helms spent the first 16 years of his career with AT&T where he served in several positions of increasing responsibility in the areas of operations, service management and engineering.

Dr. I-Hung Li, Senior VP, Technology, CTO

Dr. Li has more than 20 years of communications experience. Before joining ARBROS, he was the Senior Vice President at Paragon Solutions, responsible for the strategic direction and product delivery of its R&D organization. Dr. Li first worked as a software engineer for Bendix Corporation, where he developed a wideband data network for the Voyager project led by the California Institute of Technology Jet Propulsion Laboratory. In 1980 he joined Lucent Technologies (formerly AT&T Bell Labs), holding increasingly responsible roles as software engineer, project leader, project manager, system architect technical manager and senior technical manager throughout his 18 years there. In 1994 he spearheaded the customer technical support effort for the Japan Wireless PHS Project and later for the Asian Pacific countries. A featured speaker at numerous events, including the annual International Conference on Advanced Science and Technology, Dr. Li holds a PhD in Mathematics from Johns Hopkins University.

Russell B. Stevenson, Jr., Executive Vice President and General Counsel

Mr. Stevenson has been engaged in business law for 30 years, as a teacher, regulator, private practitioner and in-house counsel. Before joining ARBROS, Mr. Stevenson served as General Counsel for CyberCash, Inc., a leading provider of software and services for electronic commerce. From 1971 to 1981, he was a professor of law at George Washington University, a visiting professor at Cornell Law School, and a Fulbright Professor at the University of Paris II (Sorbonne). In 1981, Mr. Stevenson joined the staff of the Securities and Exchange Commission, serving there as Deputy General Counsel. He returned to private practice in Washington, D.C., in 1984. Mr. Stevenson holds a degree in Mechanical Engineering from Cornell University and received his JD, cum laude, from Harvard Law School. He is a member of the bars of the District of Columbia and the United States Supreme Court.

J. Dirk VerMeulen Jr., Senior Vice President, Sales and Corporate Development

Mr. VerMeulen brings nearly a decade of domestic and international telecommunications industry experience to his role of overseeing strategic planning, marketing and sales at ARBROS. Before joining ARBROS, Mr. VerMeulen served as General Manager of Consumer Sales for Ameritech New Media, a leading provider of cable TV services in the Midwest. Also during his tenure at Ameritech, he was a General Manager of Sales within Ameritech International working in Belgium with Belgacom, the leading Belgian telecommunications company. Prior to his engagement in Europe, he served as Director of Sales, Indiana, for Ameritech's Enhanced Business Services division. In addition, Mr. VerMeulen held various positions within Ameritech, ROLM and Fujitsu. Mr. VerMeulen holds a BA in Business Administration from Hope College in Holland, Michigan.

Samuel Vogel, Senior Vice President, Marketing and External Affairs

Mr. Vogel has 39 years of experience in the telecommunications industry in marketing, sales, regulatory, operations and engineering. Between March of 1999 and March 2000, he served as Chief Operating Officer and Vice President of Operations for ARBROS, responsible for all operations functions, including network engineering, planning and management, information systems, customer service, regulatory, sales and marketing. Mr. Vogel's 35-year career with New York Telephone, AT&T and NYNEX culminated in 1996 where, as Managing Director in their Business Markets Group, he developed new products and managed \$1.2 billion in calling services revenues. He went on to work for the Carrier Services Division of US ONE Communications; to consult for Bell Atlantic/NYNEX; and to oversee all CLEC operations functions for Metropolitan Telecommunications as its Executive Vice President of Operations, Sales and Marketing. Mr. Vogel holds a BS in Business Administration, cum laude, from the New York Institute of Technology.

Howard F. Zuckerman, Senior VP, Finance, CFO

Mr. Zuckerman has over 25 years of experience in financial management (16 years of which are in the telecommunications industry), including senior level executive positions since 1992 with both domestic and international based operations. While his career has encompassed all the traditional areas of finance, including SEC filings, financial reporting, accounting and internal controls, financial planning, budgeting and treasury, he also has extensive experience in the purchase and sale of companies. He joins ARBROS from Bell Atlantic Corporation (now Verizon). His most recent assignment was as Executive Vice President and Chief Financial Officer and a director of Grupo Iusacell (NYSE), Mexico's second largest wireless telecommunications company (\$400 million annual revenues) where he developed and managed all financial functions, led transactions which raised \$1 billion in both equity and debt capital and maintained relationships with Wall Street and institutional investors. Prior to that assignment which began in late 1996, Mr. Zuckerman was Vice President of Finance and CFO of a then newly created division of Bell Atlantic's Network Services Group responsible for its interconnection/access business with 175 inter-exchange carriers. From 1984 to 1993, he held various corporate and divisional level positions with the non-regulated entities managed as the Bell Atlantic Enterprises Group, many of which were startups or acquired companies. From 1975 to early 1984, Mr. Zuckerman was with Squibb Corporation, where he was appointed by the Board as an Assistant Corporate Controller in 1982. From 1970 to 1975, Mr. Zuckerman was employed by the audit division of the New York office of Arthur Andersen & Co. He is a Certified Public Accountant in New York (1971) and New Jersey and holds an economics degree from Cornell University and a M.B.A. degree from the University of Chicago.