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State of Florida



# Public Service Commission

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**DATE:** May 6, 2004

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Competitive Markets & Enforcement (Buys, M. Watts) DRB  
Office of the General Counsel (L. Fordham, Rojas, Teitzman)  
Office of Standards Control & Reporting (Lowery) RCM

**RE:** Docket No. 020645-TI – Compliance investigation of UKI Communications, Inc. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, and Toll Provider Selection.

Docket No. 031031-TI – Compliance investigation of Miko Telephone Communications, Inc. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection.

Docket No. 040062-TI – Compliance investigation of New Century Telecom, Inc. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection.

Docket No. 040289-TI – Compliance investigation of Optical Telephone Corporation for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection.

**AGENDA:** 05/18/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** REVISED - original was filed on April 21, 2004.

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\031031.REV.RCM.DOC

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### Case Background

Staff's recommendations for Docket Nos. 020645-TI, 031031-TI, 040062-TI, and 040289-TI are combined in one memorandum to demonstrate apparent relationships between Miko Telephone Communications, Inc. (Miko), New Century Telecom, Inc. (New Century), Optical Telephone Corporation (Optical), and UKI Communications, Inc (UKI). Miko, New Century, and Optical are charged with apparent violations of Rule 25-4.118, Florida Administrative Code (F.A.C.), Local, Local Toll, or Toll Provider Selection, also referred to as slamming. UKI is charged with failing to comply Proposed Agency Action Order PSC-03-0990-PAA-TI, issued September 3, 2003, made final and effective by Consummating Order PSC-03-1078-CO-TI, issued September 30, 2003, in which the company's offer to settle apparent slamming violations and pay regulatory assessment fees was approved by the Commission.

In addition to the companies named above, staff discusses other interexchange telecommunications companies (IXCs) that have been or are currently under investigation by staff for slamming. The companies are America's Tele-Network Corp. (ATN), WebNet Communications, Inc. (WebNet), World Communications Satellite Systems, Inc. (WCSS), America's Digital Satellite Telephone, Inc. (ADST), and OLS, Inc. (OLS). These companies ATN, WebNet, WCSS, and ADST appear to have a current or past relationship with the companies that are subjects of the recommendations presented herein.

During its investigation of all the companies named above, staff obtained various documents and information that suggest some of the these companies may be linked through financial, managerial, and operational associations. All of these companies are switchless resellers of long distance service and have been or are currently under investigation by staff for slamming.

The following lists a key person associated with each company and the status of each company's registration with the Commission:

**ATN – Mr. John W. Little, President:** ATN's IXC registration and tariff and CLEC certificate were involuntarily cancelled by the Commission as part of a settlement offer to resolve the company's apparent slamming violations in Docket Nos. 001066-TI and 001813-TX (Order No. PSC-01-1035-AS-TP, issued April 27, 2001).

**WebNet – Mr. Marc Howard Lewis, President:** WebNet's IXC registration and tariff was involuntarily cancelled by the Commission, effective February 8, 2002, as part of a settlement to resolve the company's apparent slamming violations in Docket No. 001109-TI (Order No. PSC-01-2432-PAA-TI, issued December 13, 2001).

**WCSS – Ms. Caterina Bergeron, President:** WCSS's IXC registration and tariff became effective on October 8, 2001, and is still current.

**ADST – Mr. Damian Cipriani, President:** ADST requested voluntary cancellation of its IXC registration and tariff in a letter addressed to the Commission dated December 15, 2003. In Docket No. 040298-TI, the company's cancellation request was acknowledged on April 5, 2004, and the company's IXC registration was cancelled with an effective date of December 16, 2003.

**Optical – Mr. Mark Frost, President:** Optical’s IXC registration and tariff became effective on September 14, 2001, and is still current.

**OLS – Ms. Geri ~~Buffa~~ Eubanks (~~aka formerly Buffa, then Clary, Eubanks, Duty~~), President:** OLS’s IXC registration and tariff became effective on October 7, 1997, and is still current.

**Miko – Ms. Margaret Currie, President:** Miko’s IXC registration and tariff became effective on September 26, 2001, and is still current.

**New Century – Ms. Karyn Bartel, President:** New Century’s IXC registration and tariff became effective on March 20, 1996, and is still current.

**UKI – Mr. Guiseppe Vitale, President:** UKI’s IXC registration and tariff was cancelled by the Commission effective December 1, 2003, in Docket No. 020645-TI (Order No. PSC-03-0990-PAA-TI).

### **Financial Connection**

On February 19, 2003, Commission staff sent a Subpoena Duces Tecum to Intellicall Operator Services, Inc. d/b/a ILD (ILD) seeking information regarding links between the companies. ILD responded in March 2003, and provided staff with a copy of a cross-corporate guarantee and other documents (Attachment A) that show the following relationships:

- WebNet, UKI, ADST, WCSS, and Miko are affiliates of ATN.
- WebNet, ADST, WCSS, Miko, ATN, ~~Optical~~ and New Century are parties to a cross-corporate guarantee with each another. UKI is listed on the agreement but it was not signed by a UKI representative.
- The address to which ILD remits payment to Miko, WCSS and Optical ~~are~~ is not the companies’ respective corporate addresses, but the corporate address of ATN; 720 Hembree Place, Roswell, Georgia, 30076.

The cross-corporate guarantee is a financial agreement executed by WebNet, ADST, WCSS, Miko, ATN, ~~Optical~~ and New Century in December 2002. In the agreement, each company unconditionally guaranteed to ILD the prompt repayment of advances and discharge when due of each and all obligations and indebtedness of the companies for advances and/or services supplied by ILD. Simply, each company promised to pay the debts owed to ILD by any of the other companies included in the agreement. Hence, it appears that WebNet, ADST, WCSS, Miko, ATN, ~~Optical~~ and New Century are connected financially by sharing expenses through the cross corporate guarantee agreement with ILD.

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### **Managerial Connection**

**UKI and New Century** - In its response to staff's Subpoena Duces Tecum, ILD provided other documents that suggest additional associations between the companies. The 1+ Billing and Collections Agreement (in Attachment A), made on May 19, 2000, between UKI and ILD, appears to list Karyn Bartel as UKI's contact person to receive notices in connection with the agreement. Thus, it seems reasonable to assume that Karyn Bartel was associated with UKI in some management capacity before becoming president of New Century.

**Miko, Optical, and WCSS** - Miko, Optical, and WCSS each sent a letter, dated January 22, 2003, to ILD requesting to cancel the cross-corporate financial guarantee agreement between each of the companies and UKI. Each of the letters appears to have been signed by the companies' respective presidents. The letters are identical except for the letterhead. Staff believes the letters demonstrate the companies may share the same management because the letters were created using the same language, format, and date.

**UKI and WCSS** - In UKI's application for Approval to Offer, Render, Furnish, or Supply Telecommunications Services as a Reseller of Services to the Public in the State of Arkansas (Attachment B), Caterina Bergeron appears to have signed as the official administering the oath for the Verification of Giuseppe Vitale affirming he is the president of UKI, and is dated November 19, 1999. In addition, Caterina Bergeron appears to have signed as the notary on UKI's Articles of Incorporation in the State of Nevada, dated August 4, 1999. Staff believes these documents suggest that Caterina Bergeron was affiliated in some capacity with UKI.

**WebNet and WCSS** - Marc Lewis, president of WebNet, appears to have signed as endorser for Caterina Bergeron's character in an application for Notary Public Commission in Fulton County, Georgia, submitted by Caterina Bergeron (Attachment C). The business address listed for Caterina Bergeron is 720 Hembree Place, Roswell, Georgia; ATN's address. The document was signed February 4, 1997. Staff believes that this document suggests that the president of WebNet, Marc Lewis, and the president of WCSS, Caterina Bergeron, are associates, and that Caterina Bergeron's place of business during that time was that of ATN.

**UKI and Optical** - Mark Frost, president of Optical, included his resume (Attachment D) in Optical's application for an IXC certificate submitted to the Commission on May 30, 2001. His resume stated that from 1999 to present, he was in charge of maintaining and updating records for customer service at UKI. Thus, it appears that Mark Frost may have been simultaneously employed by UKI and president of Optical.

**Optical and WCSS** - Caterina Bergeron, president of WCSS, appears to have notarized Optical's Application for a Certificate of Public Convenience and Necessity to Offer Long Distance Telecommunications Service by a Reseller in North Carolina (Attachment E). The application was signed by Marc Frost and dated June 26, 2001. WCSS was incorporated in the State of Virginia on April 13, 2000, hence, a reasonable person would not expect the president of WCSS to be involved in the application process of its apparent competitor.

**WCSS and ADST** - Caterina Bergeron appears to have signed as the official administering the oath for the Verification of Damian Cipriani affirming he is the president of ADST, dated June 27, 2001 in ADST's application for Approval to Offer, Render, Furnish, or Supply Telecommunications Services as a Reseller of Services to the Public in the State of Arkansas (Attachment F). Also included in the application is a copy of the Articles of Incorporation for ADST in the State of Nevada. Damian Cipriani appears to be listed as the Director, Rodney Harrison appears to be listed as the Incorporator, and Caterina Bergeron appears to be listed as the Notary. The document is dated February 3, 2000. Staff believes that these documents suggest that Damian Cipriani, Caterina Bergeron, and Rodney Harrison were associates as early as February 3, 2000.

**FVC** - Rodney Harrison is the sole owner of Federal Verification Corporation, Inc. (FVC) located at 230 Judson Way, Alpharetta, Georgia, 30022. FVC was incorporated in Georgia on February 16, 2001. FVC was utilized by Miko, ADST, UKI, and Optical to perform third party verifications (TPVs) for carrier changes executed by the companies. Rodney Harrison appears to have notarized Miko's Application for a Certificate of Public Convenience and Necessity to Offer Long Distance Telecommunications Service by a Reseller in North Carolina (Attachment G). The application was signed by Margaret Currie and dated July 9, 2001. Also, Rodney A. Harrison appears to be listed as the Custodian of Accounting Records for UKI in Attachment B. Rodney Harrison appears to have also notarized documents in Fulton County, Georgia for ADST, and Optical. Hence, it appears that Rodney Harrison and FVC are affiliated in some capacity with UKI, Miko, ADST, and Optical.

**ATN, OLS, WCSS, and FVC** - John W. Little, former president of ATN, and ~~Geri Duty, president of OLS~~, appears to have signed as endorsers for Rodney Harrison's character in an application for Notary Public Commission in Fulton County, Georgia, submitted by Rodney Harrison (Attachment H). Caterina Bergeron appears to have signed as the Notary affirming Rodney Harrison's signature. The document is dated March 2, 2001. Staff believes this document suggests that the presidents of ATN, ~~OLS~~, WCSS, and FVC may be business associates.

In addition, according to the Amended Verified Complaint of C. David Butler (Attachment I), Chapter 7 Trustee for Sonic, filed on October 8, 1996, in United States Bankruptcy Court for The Northern District of Georgia, Atlanta Division, Caterina Bergeron, Geri Buffa Clary (~~also known as Geri Duty~~), Damian Cipriani, and Marc H. Lewis, were employed by Sonic Communications, Inc. (Sonic). Staff believes this is significant because it suggests that these four individuals worked together at Sonic. On page 28 of his complaint, Mr. Butler claims the following:

- One week after the Original Defendants (of which Caterina Bergeron, Geri Buffa Clary, Damian Cipriani, and Marc H. Lewis were included) filed their answer to the Trustee's Complaint, ATN was incorporated.
- ATN's president is John W. Little, former Sonic employee and Buffa family member, and upon information and belief, ATN is in the telecommunications business and received at least \$335,000 originating from Sonic to begin its operations and that, most, if not all, of ATN's employees are related to John S. Buffa, former president and majority shareholder of Sonic.

- Cathy (Caterina) Bergeron, Damian Cipriani, Geri Clary, and Marc Lewis are among those former Sonic employees who received payments from ATN as employees or independent contractors.

Based on the aforementioned, staff has reason to suspect that ATN, WebNet, OLS, WCSS, ADST, Optical, Miko, and New Century may be managed collectively by the same individuals, and that those same individuals appear to have been business associates in the past at Sonic, ATN, and UKI. As discussed in the Slamming History, each of these companies was apparently involved in egregious slamming activity in Florida.

### **Operational Connection**

Based on information contained in various slamming complaints from Florida consumers, it appears that WCSS, Optical, Miko, and UKI may share the same operational support system and/or billing system. Customers have received charges for direct dialed calls on their local phone bills from two companies simultaneously even though only one of them is the presubscribed carrier.

**Miko and WCSS** - In a slamming complaint filed by Rita Dunayew, Request No. 512643T, she states that she received a solicitation from WCSS and agreed to use it as her long distance provider. Upon receiving her bill, she was confused as to who was the service provider; Global Crossings was listed as her service provider, but she was told by Global Crossings that Miko was the company responsible for the customer's account. Ultimately, it was determined that Miko was the customer's long distance service provider, not WCSS. Hence, it appears that WCSS marketed its services to the customer, but Miko was the actual service provider. Staff believes that this suggests Miko and WCSS may be sharing customers, are one in the same company, or share operational support systems.

**UKI and Optical** - In a slamming complaint filed by Antonio Coro against Optical, Request No. 511708, Mr. Coro provided staff with a bill for his local service that included charges from both UKI and Optical. The complaint proved to be an apparent slamming infraction and Optical credited all the charges. Optical was the presubscribed carrier, but UKI included charges for a Universal Service Fee and a monthly fee on the customer's bill in addition to the charges from Optical.

**Miko and Optical** - In slamming complaints filed by Librada Barrero against Miko and Optical, Request Nos. 538563T and 538658T, respectively, Ms. Barrero reported she was billed by both Miko and Optical. In another apparent cross-billing instance, Robert Marco also filed slamming complaints against Miko and Optical, Request Nos. 544466T and 544491T, respectively. Both Ms. Barrero and Mr. Marco provided staff with copies of bills for their local service that included charges from both Miko and Optical. The disputed charges were for direct dialed calls made in April 2003 through Optical's service even though both were switched to Miko. In its response to the complaints, Miko reported that it was responsible for the carrier change although Optical also billed the customer for direct dialed calls during the time Miko was the presubscribed service provider. In the Marco case, Miko credited the customer for most of the charges, apparently including the charges from Optical.

### **Slamming History**

**Sonic** - In Order No. PSC-93-1455-FOF-TI, issued October 7, 1993, the Commission ordered Sonic to Show Cause why the company should not be fined or have its certificate cancelled for seventy-one (71) instances of slamming. In the Sonic case, the company explained that customers called a national 800 number, and through an electronic interface, selected Sonic as their carrier. However, a review of the complaints revealed that many consumers denied ever making an initial call to the Sonic 800 number requesting a change. Sonic also maintained that a letter was sent to each customer who called the 800 number welcoming him or her to Sonic service and stating that the customer should call another Sonic 800 number if the customer did not choose Sonic as his/her long distance carrier. However, no complainant reported receiving a letter from Sonic advising them to call another number if they did not wish to subscribe to the service. While Sonic refunded customers for unauthorized preferred interexchange carrier (PIC) changes and re-rated calls to those of the customer's previous carrier, Sonic failed to explain the high volume of slamming complaints against it. Sonic's IXC certificate was cancelled effective November 7, 1995, for failing to comply with the Commission's rules regarding reporting requirements.

**ATN** - In Docket No. 001066-TI, staff filed a recommendation on September 14, 2000, for the Commission to order ATN to show cause why it should not be fined for apparent slamming violations alleged by consumers. The company requested that the item be deferred from the Agenda Conference and eventually proffered a settlement. Between March 7, 1996, and March 7, 2001, the Commission received 299 slamming complaints from Florida consumers. The majority of all 299 apparent infractions were for the failure of the company to provide the required documentation to prove that the interexchange carrier change was authorized. At least sixty-one (61) complainants reported they were never contacted by an ATN representative and discovered they had been slammed when they reviewed their telephone bill. ATN could not produce an LOA or TPV recording to confirm any contact with the 61 customers. Moreover, twelve of the complainants reported that a telemarketer misled them into believing they were talking to an AT&T representative about AT&T services, when in fact they were being solicited by ATN. ATN settled the docket by resolving all customer complaints, surrendering its certificate and discontinuing operations in Florida.

**WebNet** - In Docket No. 001109-TI staff filed a recommendation on September 14, 2000 for the Commission to order WebNet to show cause why it should not be fined for thirty-two (32) apparent slamming violations. Between April 21, 2000, and August 21, 2000, the Commission received forty-five (45) slamming complaints from Florida consumers claiming they were slammed by WebNet. Staff determined that 32 of those complaints were apparent slamming infractions. The majority of the complaints against WebNet are considered to be slamming infractions because the company either failed to provide proof that the customer authorized the carrier change or the TPV provided to the Commission did not meet the requirements set forth in the Rule 25-4.118, F.A.C.

**OLS** - In Docket No. 010245-TI, staff filed a recommendation on March 21, 2001, for the Commission to order OLS to show cause why it should not be fined for forty-nine (49) apparent slamming violations. Staff reviewed the slamming complaints and concluded that all of the violations result from OLS's failure to provide the appropriate documentation to prove that the service provider changes were authorized. In these cases, OLS used telemarketers to solicit it

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services and recorded the verification process as proof of the customer's authorization for OLS to change providers. The copies of the recorded verification process that OLS sent to the Commission's staff did not contain the necessary information for verification and/or authorization as required by the Commission's slamming rule.

**ADST** - Between January 24, 2002, and July 16, 2003, the Commission received seventy-eight (78) slamming complaints against ADST. Staff determined that sixty-nine (69) of those complaints appear to be slamming infractions. The Commission has not received any complaints against ADST since July 16, 2003, therefore, a docket was not opened and staff is currently monitoring the company for additional complaints. In most of the complaints, the customers state that they had no contact with any representatives from ADST, and only became aware that ADST was their long distance carrier when they reviewed their local telephone bills, similar to complaints filed against ATN. The most common complaint was that after apparently slamming the customers' service, ADST would not credit the customers' accounts after an ADST representative indicated to the customer that the company would issue a credit. In some cases the customers continued to be billed for six months without receiving credit.

**WCSS** - From December 19, 2001, through August 15, 2003, the Commission received eighty-one (81) slamming complaints from Florida consumers, sixty-six (66) of which were determined by staff to be apparent slamming infractions. From October 4, 2002, through December 4, 2002, staff corresponded with WCSS and the company's legal counsel to address the alleged slamming. The majority of the complaints were considered to be slamming infractions because the company either failed to provide proof that the customer authorized the carrier change or the TPV provided to the Commission did not meet the requirements set forth in the slamming rule. Like ADST, WCSS failed to credit the customers' accounts as indicated in its resolution to the slamming complaints. In several cases, the customers filed additional complaints claiming WCSS did not credit their accounts as promised. WCSS then issued the complaining customer a refund check to resolve the ensuing complaint. Staff is currently monitoring WCSS for additional complaints; the most recent new slamming complaint was received August 15, 2003.

### **Telemarketing Similarities**

Slamming complaints received against the companies reference similar telemarketing tactics which appear to be misleading and confusing to the consumers. All of the companies utilize telemarketing to solicit their services. The companies still operating and telemarketing (WCSS, Miko, Optical, and New Century) appear to employ a variety of sales pitches to persuade consumers to provide their personal information and state "yes" to a question. The recorded information and statements are allegedly used to create a third party verification (TPV) tape that the companies use as authorization to switch the customers' long distance service. These sales tactics involve the solicitation of a free long distance calling card, offering customers a promotional check, offering to send the customer information about the company's services and rates, or supposedly conducting a survey regarding long distance service or telephone companies.

**UKI** - In a slamming complaint filed against UKI by Mr. Jose A. Abin, Request No. 420514T, Mr. Abin states in his letter dated November 19, 2001, that a telemarketer called his wife and informed her that she was the winner of a free long distance calling card. Mr. Abin states that the telemarketer instructed his wife to say "yes" or "no" at the sound of the tone and she



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provided her date of birth and address. Mr. Abin claims that at no time during the call did the telemarketer indicate that their long distance service provider would be changed.

**Optical** - In a slamming complaint filed against Optical by Mr. Jaime R. Quinones, Request No. 446088T, Mr. Quinones states that he received a call from "The Telephone Company" and was offered a free 1500 minute calling card from the telemarketer. Mr. Quinones states that he was instructed to answer the questions that were similar to, "would you like 1500 free minutes for trying our service," and "are you authorized to make decisions about your phone service?" Mr. Quinones responded "yes" to both of the questions, then provided his name, address, and date of birth. Mr. Quinones states that, "Nothing was ever mentioned that I would be changing my long distance carrier. They offered me a calling card I never got; instead, they switch[ed] my long distance company."

**WCSS** - In complaints filed against WCSS, some customers claim that a telemarketer offered to mail the customers a promotional check and a form to switch service. The customers provided their name and address and mother's maiden name or date of birth to receive the information. However, the customers claim they never received the check or form, but their long distance service was switched to WCSS.

- In the complaint by Joseph Scherf, Sr., Request No. 483607T, Mr. Scherf states that he received a call from a company supposedly doing a survey, and when he listened to the TPV tape played by WCSS, he claimed the questions on the tape are not the same as the questions asked of him during the survey.
- In a complaint filed by Jose Luis Campos, Request No. 510342T, Mr. Campos states that he did not authorize WCSS to switch his long distance service, and he only provided his personal information in order to receive a free calling card.

**OLS** - Staff's investigation into OLS' telemarketing methods revealed some extremely egregious conduct. Staff personally called and talked to fifty of the people who filed a slamming complaint against OLS. A significant number of the fifty complainants reported that the telemarketers who called them misrepresented themselves as Verizon representatives. After talking to some of the complainants and reviewing the cases, staff learned that OLS telemarketers apparently used several fraudulent approaches to persuade consumers to change providers to OLS and go through its verification process. First, the telemarketer allegedly told the consumer that due to Verizon's merger with GTE, they would not have a long distance carrier and needed to choose a new one. Second, the telemarketer allegedly told the consumer that they were with Verizon and needed to verify the customer's information as a result of merging with GTE. Third, some complainants stated that they were led to believe that OLS (OLS is an acronym for On Line Services) was a long distance program offered by Verizon.

**ADST** - In slamming complaints filed against ADST, some customers reported instances of misleading telemarketing.

- In Request No. 486325T, Mr. Terrence Griffiths states in a hand written note to staff, "We did not authorize the [carrier] change – the survey questions asked were not what is heard on the [TPV] tape. The responses appear to be dubbed in."

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- In Request No. 489731T, Mark Holland states that a telemarketer called indicating that he was from Sprint and that he was due a refund for overcharges; on his next bill, Mr. Holland's long distance service was switched to ADST. Mr. Holland states that he tried to resolve the matter with ADST and ILD, but both companies were rude and would hang up.
- In Request No. 538170T, Melissa Fritsch claims that she agreed to switch to ADST in June 2002, but did not receive the rates promised in the telemarketing call and switched back to MCI in November 2002. Ms. Fritsch reported that in April 2003, her long distance service was again switched by ADST. She contacted ADST and was informed that she authorized the carrier change on April 18, 2003. Ms. Fritsch states that the ADST representative played the TPV of her verification in June 2002. The company never provided a TPV for the carrier change that allegedly occurred on April 18, 2003.

**Miko** – Miko's apparent slamming activity is discussed in Issue 1.

**New Century** – New Century's slamming activity is discussed in Issue 2. Staff acknowledges that the company's legal counsel approached staff in an effort to resolve the apparent slamming instances, however, due to the nature of the complaints and the suspected link between Miko and the other companies, staff advised the company that it will file a recommendation seeking the Commission's position on this matter.

### **Aggregate Affects**

Staff believes that the group of companies functions in the following manner. The first company, ATN, began to engage in aggressive and sometimes misleading telemarketing tactics to enlist a large number of customers and generate cash flow from ILD. Consequently, the PSC received a large number of slamming complaints. Once the PSC began enforcement proceedings, ATN apparently ceased the activities that were causing the slamming complaints. However, WebNet began to engage in similar telemarketing activities, and thus, the slamming complaints against Webnet began to increase. Again, once staff initiated enforcement proceedings against WebNet, the complaints against Webnet declined. Subsequently, the slamming complaints against OLS increased about the same time the complaints against WebNet decreased, suggesting that OLS increased its telemarketing activities. This pattern is repeated with UKI, Optical, UKI again, ADST, WCSS, Miko, and finally New Century. It appears that each company, once notified by staff that it is under investigation, stops or minimizes telemarketing in Florida to reduce the number of complaints, but another company assumes the same telemarketing tactics practiced by the preceding company. None of the companies, OLS excluded, appear to have changed their telemarketing and verification processes to comply with the Commission's slamming rule. Collectively, the companies appear to sustain the misleading telemarketing activities by transferring operations to a new company so as to give the appearance that the company under investigation has corrected the problems causing the apparent slamming infractions. Staff created Chart 1 in Attachment BB to illustrate this cycle.

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According to the Commission's Unauthorized Carrier Change Complaints Report, since July 1, 1999, 174 different companies providing service in Florida have committed at least one apparent slamming infraction. The nine companies discussed herein are responsible for one-third (1,255) of all the apparent slamming infractions stemming from consumer complaints the Commission received since July 1, 1999. If Sprint, AT&T, and MCI are excluded from the sample, these nine companies are responsible for one-half of all the carrier changes that appear to be slamming infractions. Chart 2 in Attachment BB shows the number of complaints received from all nine companies combined.

In summary, it appears that the individuals named in this recommendation have perpetuated a history of slamming activity at each of the companies in which they were associated. Those individuals appear to have been employed by or contracted their services to Sonic, then ATN, thereafter, they established their own corporations: WCSS, ADST, WebNet, UKI, and OLS. Once these companies began to attract the interest of the FCC and state regulatory agencies, the operations of the companies apparently were transferred to Optical, Miko, and New Century. Staff believes that the companies' intent is to enlist as many customers as possible through aggressive and misleading telemarketing tactics so as to generate cash flow from billing the customers through ILD. By delaying the credits due to the complainants for as long as possible, the companies are able to maintain a positive cash flow without actually providing service to customers on an ongoing basis. The Commission is vested with jurisdiction over this matter pursuant to Sections 364.02(13), 364.04, 364.285 and 364.603, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

### Discussion of Issues

**Issue 1:** Should the Commission penalize Miko Telephone Communications, Inc. \$10,000 per apparent violation, for a total of \$1,540,000 for 154 apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

**Recommendation:** Yes. If Miko Telephone Communications, Inc. fails to request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If the company fails to pay the amount of the penalty within fourteen calendar days after issuance of the Consummating Order, registration number TJ561 should be removed from the register, the company's tariff should be cancelled, and the company should also be required to immediately cease and desist providing intrastate interexchange telecommunications services within Florida. **(Buys, L. Fordham)**

**Staff Analysis:** From July 31, 2002, through October 31, 2003, the Commission received a total of 159 slamming complaints against Miko. On February 20, 2003, staff sent Miko a letter via certified U.S. Mail (Attachment J) informing Miko that the company's TPVs do not meet all the requirements set forth in Rule 25-4.118, Florida Administrative Code (F.A.C.). In its letter, staff requested that Miko investigate the slamming complaints and provide staff with a written response.

In its response (Attachment K), Miko stated that (1) it is not at fault for slamming if the consumer does not remember the telemarketing call, (2) it has verifications on all customers, and therefore, has no slamming complaints, and (3) it has stopped marketing in the state of Florida at the present time. The company also provided staff with a revised verification script, however, the script still does not comply with the requirements set forth in Rule 25-4.118(3)(a), F.A.C.

From March 6, 2003, through August 19, 2003, staff monitored and evaluated the slamming complaints the Commission received against Miko to determine if the company was still marketing its service in Florida. Staff selected random complaints and requested preferred interexchange carrier (PIC) histories for the customers' service from BellSouth and Verizon. The PIC history provided by BellSouth shows that Miko switched a complainant's long distance service on April 18, 2003, and the PIC history from Verizon shows that Miko switched a complainant's InterLATA and IntraLATA services on June 13, 2003. Miko previously indicated to staff that it stopped marketing in Florida as of February 26, 2003. Hence, it appears that Miko did not cease marketing in Florida as it indicated to staff.

Moreover, it appears that Miko's telemarketing and verification processes are egregious and misleading in nature. In many of the complaints, the customers claim that Miko altered the TPV recording to make it appear that they authorized the carrier change. In the seven complaints listed below, the customers submitted letters or emails explaining the circumstances of their slamming incidents.

1. Ms. Grace Calvani states in her letters (Attachment L) that she never authorized service and the TPV Miko obtained was a recording of her mother confirming Ms. Calvani's information.

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2. Rev. Manacio G. Dias states in his letter (Attachment M) that he was offered “a gift of one free 100 minute long distance calling card for a trial.” Rev. Dias explains that he was told to say “yes,” followed by his name and phone number after a recorded message to confirm the acceptance of the free trial phone card.

3. Ms. Ivelise Velez states in her email (Attachment N) that, “this company is making telemarketing phone calls and then using the information they are collecting to slam. . . . I called the company and they are playing the information back in pieces so that it sounds like the person was answering the questions when in fact the information was requested as part of a different conversation.”

4. Mr. Luis Ahumada states in his email (Attachment O) that, “the tape sounds very funny and overlaid. As if the questions that were asked were tailored to overlay a conversation about accepting the change in long distance.”

5. Ms. Alicia Figureoa states in her letter (Attachment P) that she received a phone call from a person requesting verification of her name, address, date of birth, and some additional personal information. She states she refused to give out the information and hung up. On her next phone bill, she was informed her long distance carrier was switched to Miko. She further states that, “she strongly objects to the deceptive questionable tactics used to switch her telephone service.”

6. Mrs. Jessie Wollstencroft states in her letter (Attachment Q) that she received an unsolicited phone call and was asked some questions by a personable solicitor. Later she realized her phone service was slammed. She states in her letter to Miko that, “. . . at no time did your solicitor tell me he was recording the conversation. I NEVER accepted to be switched by your company. The only thing I can assume is that you created the voice recording that my husband heard by editing the conversation you recorded without my permission.”

7. Mr. Orlando Cabeza states in his email (Attachment R) that his wife received an unsolicited phone call from a long distance company offering a promotional free long distance card with 1200 free minutes and at no time did the telemarketer advise his wife that by agreeing to accept the free calling card she was also agreeing to switch long distance service. Mr. Cabeza states that he never received the free long distance card as promised, but his long distance service was switched to Miko. Mr. Cabeza further explains that the telemarketer that called his wife had a male voice and when he heard the recording of the TPV that Miko played for him, that, “the portion of the recording which purportedly indicates that we are authorizing a change to Miko is in a female voice and it cuts in and out between her and the male ‘pitch-man’ who placed the call as if the recording has been altered or modified.”

To summarize, Miko apparently markets its services to Florida consumers through telemarketers who apparently employ a variety of sales pitches to persuade the customers to provide their name, address, telephone number, and date of birth or mother’s maiden name. Some of Miko’s sales tactics involve soliciting a free long distance calling card to try Miko’s service without any obligation, offering customers a promotional check, or purportedly conducting a survey regarding long distance service or telephone companies. After reviewing the complaints, staff found no evidence that Miko’s telemarketers advised the customers that the purpose of the call was to solicit a change of the service provider of the customer as required by Rule 25-4.118(9)(b), F.A.C. Most importantly, it appears that Miko’s telemarketers made

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misleading and deceptive references during telemarketing and verification while soliciting for subscribers in apparent violation of Rule 25-4.118 (10), F.A.C.

Section 364.603, Florida Statutes, states:

The commission shall adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service. Such rules shall be consistent with the Telecommunications Act of 1996, provide for specific verification methodologies, provide for the notification to subscribers of the ability to freeze the subscriber's choice of carriers at no charge, allow for a subscriber's change to be considered valid if verification was performed consistent with the commission's rules, provide for remedies for violations of the rules, and allow for the imposition of other penalties available in this chapter.

To implement Section 364.603, Florida Statutes, the Commission adopted Rule 25-4.118, F.A.C., to govern carrier change procedures.

Upon review of the 159 slamming complaints received against Miko, staff determined that 154 are apparent slamming violations, in part, because the company failed to comply with the specific verification methodologies required by the Commission's slamming rules. Miko markets its services in Florida through its own telemarketers and employs a third party verification process to verify the subscriber authorized the company to change service providers.

Staff determined that in 24 cases, listed in Attachment S, Miko failed to provide proof in the form of a TPV recording that the customer authorized Miko to change service providers in accordance with Rule 25-4.118(1) and (2), F.A.C.

In the remaining 130 cases listed in Attachment T, the TPVs submitted by Miko did not contain all the specific verification information required by Rule 25-4.118(2)(c), F.A.C., listed in subsection (3)(a) 1. through 5.

Staff determined that in all but a few of cases, the TPVs submitted by Miko were missing the following statements:

- The statement that the customer's change request will apply only to the number on the request and there must only be one presubscribed local, one presubscribed local toll, and one presubscribed toll provider for each number.
- The statement that the Local Exchange Carrier (LEC) may charge a fee for each provider change.

In some of the TPVs staff reviewed, the telemarketer stays on the line during the verification process and prompts the customer to answer verification questions; meaning the TPV is not performed by an independent third party as required by Rule 25-4.118(2)(c), F.A.C. Hence, all of the TPVs the company submitted to the Commission as proof the customers authorized Miko to change their service providers are not considered valid. In addition, when resolving the slamming complaints, Miko did not refund the charges within 45 days of notification to the company by the customer pursuant to Rule 25-4.118(8), F.A.C.

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Miko indicated to staff in its letter (Attachment K) that FVC is the company that performs its TPVs. As discussed in the case background, FVC does not appear to be totally independent and unaffiliated with Miko as required Rule 25-4.118(2)(c), F.A.C. Further, it appears that Miko submitted TPVs that were not the actual verifications that were recorded. Therefore, staff believes that all of the TPVs submitted by Miko could be considered suspect.

In most of the complaints, Miko rerated its charges for the customers' calls to 7¢ per minute or the rates of the customers' preferred carrier instead of refunding all of the charges for the first 30 days as required by Rule 25-4.118(8), F.A.C. Further, in most cases, Miko did not refund the Federal Tax and Florida Communications Tax assessed on the company's charges.

In addition, Rule 25-4.118(13)(b), F.A.C., states that in determining whether fines or other remedies are appropriate for a slamming infraction, the Commission shall consider among other actions, the actions taken by the company to mitigate or undo the effects of the unauthorized change. These actions include but are not limited to whether the company, including its agents and contractors followed the procedures required under subsection (2) with respect to the person requesting the change in good faith, complied with the credit procedures of subsection (8), took prompt action in response to the unauthorized change, and took other corrective action to remedy the unauthorized change appropriate under the circumstances.

Based on the requirements of Rule 25-4.118(13)(a), F.A.C., Miko appears to have committed 154 unauthorized carrier changes. First, Miko did not follow the procedures required under Rule 25-4.118(2), F.A.C. Second, Miko did not comply with the credit procedures required under Rule 25-4.118(8), F.A.C. Third, staff informed Miko that its TPVs were not in compliance with the Commission's slamming rules and the company failed to take the corrective actions to remedy its verification process, and fourth, it appears that Miko's telemarketers made misleading and deceptive references during telemarketing and verification in apparent violation of Rule 25-4.118(10), F.A.C., and fifth, it appears Miko submitted fraudulent TPVs to the Commission.

Based on the aforementioned, staff believes that Miko's failure to comply with the requirements of Rule 25-4.118, F.A.C. is a "willful violation" of Sections 364.603, Florida Statutes, in the sense intended by Section 364.285, Florida Statutes.

Pursuant to Section 364.285(1), Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364, Florida Statutes.

Section 364.285(1), Florida Statutes, however, does not define what it is to "willfully violate" a rule or order. Nevertheless, it appears plain that the intent of the statutory language is to penalize those who affirmatively act in opposition to a Commission order or rule. See, Florida State Racing Commission v. Ponce de Leon Trotting Association, 151 So.2d 633, 634 & n.4 (Fla. 1963); c.f., McKenzie Tank Lines, Inc. v. McCauley, 418 So.2d 1177, 1181 (Fla. 1<sup>st</sup> DCA 1982) (there must be an intentional commission of an act violative of a statute with knowledge that such an act is likely to result in serious injury) [citing Smit v. Geyer Detective Agency, Inc., 130 So.2d 882, 884 (Fla. 1961)].

Thus, it is commonly understood that a “willful violation of law” is an act of purposefulness. As the First District Court of Appeal stated, relying on Black’s Law Dictionary:

An act or omission is ‘willfully’ done, if done voluntarily and intentionally and within the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

Metropolitan Dade County v. State Department of Environmental Protection, 714 So.2d 512, 517 (Fla. 1<sup>st</sup> DCA 1998)[emphasis added]. In other words, a willful violation of a statute, rule or order is also one done with an intentional disregard of, or a plain indifference to, the applicable statute or regulation. See, L. R. Willson & Sons, Inc. v. Donovan, 685 F.2d 664, 667 n.1 (D.C. Cir. 1982).

Thus, the failure of Miko to comply with Rule 25-4.118, F.A.C., meets the standard for a “willful violation” as contemplated by the Legislature when enacting section 364.285, Florida Statutes. “It is a common maxim, familiar to all minds, that ‘ignorance of the law’ will not excuse any person, either civilly or criminally.” Barlow v. United States, 32 U.S. 404, 411 (1833); see, Perez v. Marti, 770 So.2d 284, 289 (Fla. 3<sup>rd</sup> DCA 2000) (ignorance of the law is never a defense). Moreover, in the context of this docket, all intrastate interexchange telecommunication companies, like Miko, are subject to the rules published in the Florida Administrative Code. See, Commercial Ventures, Inc. v. Beard, 595 So.2d 47, 48 (Fla. 1992).

Further, the amount of the proposed penalty is consistent with penalties previously imposed by the Commission upon other IXCs that were determined to be slamming subscribers. Thus, staff recommends that the Commission find that Miko has, by its actions, willfully violated Sections 364.603, Florida Statutes, and impose a \$1,540,000 penalty on the company to be paid to the Florida Public Service Commission.



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**Issue 2:** Should the Commission penalize New Century Telecom, Inc. \$10,000 per apparent violation, for a total of \$420,000, for 42 apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

**Recommendation:** Yes. If New Century Telecom, Inc. fails to request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If the company fails to pay the amount of the penalty within fourteen calendar days after issuance of the Consummating Order, registration number TI427 should be removed from the register, the company's tariff should be cancelled, and the company should also be required to immediately cease and desist providing intrastate interexchange telecommunications services within Florida. **(Buys, Rojas)**

**Staff Analysis:** From August 26, 2003, through March 23, 2004, the Commission received fifty-four (54) slamming complaints against New Century from Florida consumers. Staff determined that forty-two (42) of the slamming complaints appear to be violations of Rule 25-4.118, F.A.C., because the company failed to comply with the specific verification methodologies required by the Commission's slamming rules and the apparent egregious nature of the marketing utilized by the company.

In 9 cases, listed in Attachment U, New Century failed to provide proof in the form of a TPV recording that the customer authorized New Century to change service providers in accordance with Rule 25-4.118(1) and (2), F.A.C. (refer to Issue 1 for expounded rule).

In 27 cases, listed in Attachment V, the TPVs submitted by New Century did not contain all the specific verification information required by Rule 25-4.118(2)(c), F.A.C., listed in subsection (3)(a) 1. through 5. (Refer to Issue 1 for expounded rule). Staff determined that the TPVs submitted by New Century were missing the following:

- The statement that the customer's change request will apply only to the number on the request and there must only be one presubscribed local, one presubscribed local toll, and one presubscribed toll provider for each number.

In the remaining six cases, listed in Attachment W, New Century provided staff with a TPV in which the customer authorized a carrier change for Miko, not New Century. The company claims that it purchased Miko's customer base and transferred Miko's customers to New Century. However, New Century did not request a rule waiver to transfer the customer base pursuant to Rule 25-24.455(4), F.A.C.

In the complaint of Ms. Alicia Figueroa, Request No. 521163T, Miko switched her service without her authorization in December 2002. In its response to the complaint, Miko stated that Ms. Figueroa's account was cancelled on February 24, 2003, and the company submitted a TPV that was determined by staff to be insufficient. On September 22, 2003, Ms. Figueroa's long distance service was switched to New Century Telecom without her authorization. In its response to her complaint, Request No. 567027T, New Century reported to staff that it acquired the customer base from Miko, who was the customer's authorized provider. New Century also claims that Miko sent notices to its customer's informing them of the transfer. However, Ms. Figueroa states in her letter to staff, dated October 31, 2003, (Attachment X) that

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she utilized IDT as her long distance carrier at the time of the slam. Hence, Ms. Figueroa was not a Miko customer at the time New Century switched her service. Further, in its response to the complaint, New Century sent staff the same recording of the TPV that Miko sent staff for Ms. Figueroa's prior complaint against Miko. Upon review of both TPV recordings, staff determined that the two recordings appear to be from the same verification of Ms. Figueroa, except the TPV recording submitted by New Century was missing additional statements and conversation between the customer and verifier that was heard in the original recording submitted by Miko.

After more than seven years without any complaints against New Century, the Commission began to receive slamming complaints against the company in August 2003. Upon reviewing the customer complaints, staff determined that New Century is employing the same telemarketing tactics used by Miko which are discussed in Issue 1. For example, both companies obtained information from potential customers by offering a free trial prepaid phone card. According to the customers, the phone card was never delivered, even though their long distance service was switched. In a follow-up letter to the complaint filed by Frank and Ricci App (Attachment Y), the Apps state that New Century misled them by offering a free prepaid phone card for no cost or obligation. Ricci App verified her name and address by responding "yes" to computer generated questions. The Apps did not receive the free prepaid calling card, and instead, their local toll and long distance service was switched to New Century. The Apps contacted New Century who informed them that the company has a recording of the conversation with Ricci App. The Apps claim the recording was edited to include additional questions regarding the change in long distance service providers to make the recording appear as if she agreed to change their long distance service provider.

Based on staff's analysis of the complaints, it seems likely that Miko and New Century are operated by the same principals and some of Miko's customers were transferred from Miko to New Century without the proper regulatory approval. In addition, the ownership of New Century was transferred to Kayrn Bartel on or about August 1, 2002, according to correspondence provided by New Century's legal counsel. The Commission acknowledged the transfer in Docket No. 020130-TI through Order No. PSC-02-1089-PAA-TI.

Based on the aforementioned and the legal analysis cited in Issue 1, staff believes that New Century's failure to comply with the requirements of Rule 25-4.118, F.A.C. is a "willful violation" of Sections 364.603, Florida Statutes, in the sense intended by Section 364.285, Florida Statutes, and thus, staff recommends that the Commission find that New Century has, by its actions, willfully violated Sections 364.603, Florida Statutes, and impose a \$420,000 penalty on the company to be paid to the Florida Public Service Commission.

**Issue 3:** Should the Commission penalize UKI Communications, Inc. \$250,000 for apparent violation of Proposed Agency Action Order No. PSC-03-0990-PAA-TI, issued on September 3, 2003, made final and effective by Consummating Order No. PSC-03-1078-CO-TI, issued on September 30, 2003?

**Recommendation:** Yes. If UKI Communications, Inc. fails to request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If the company fails to pay the amount of the penalty and the Regulatory Assessment Fees with statutory penalty and interest it was ordered to pay in PAA Order No. PSC-03-0990-PAA-TI within fourteen calendar days after issuance of the Consummating Order, the collection of the penalty and the Regulatory Assessment Fees with statutory penalty and interest should be referred to the Department of Financial Services. This docket should be closed administratively upon either receipt of the payment of the penalty and the Regulatory Assessment Fees with statutory penalty and interest or upon their referral to the Department of Financial Services. (M. Watts, Teitzman)

**Staff Analysis:** From January 1, 2001, to July 28, 2003, the Commission received 319 slamming complaints against UKI. Staff determined that 203 of the 319 slamming complaints received by the Commission appear to be violations of Rule 25-4.118, F.A.C. On July 29, 2003, UKI submitted its proposal to settle Docket No. 020645-TI, and on September 30, 2003, the Commission issued Consummating Order No. PSC-03-1078-CO-TI, making PAA Order No. PSC-03-0990-PAA-TI, final and effective; establishing the following schedule for UKI's compliance with the terms of the PAA Order:

- December 1, 2003 – Cancellation of UKI's tariff and registration.
- December 29, 2003 – Pay all outstanding RAFs with statutory penalty and interest.
- January 28, 2004 – Submit final report detailing how UKI complied with the terms of the settlement offer and the Order, including resolution of all unresolved consumer complaints.

On January 28, 2004, staff determined that UKI did not comply with any of the terms of its settlement offer and Order No. PSC-03-1078-CO-TI. Subsequently, on February 2, 2004, UKI attempted to effect a voluntary cancellation of its registration by submitting an unsigned request to cancel its "Certificate of Authority to transact business in the state of Florida."

Section 364.285, Florida Statutes, authorizes the Commission to impose upon any entity subject to its jurisdiction which is found to have refused to comply with any lawful order of the Commission a penalty for each offense of not more than \$25,000; and each day that such refusal continues constitutes a separate offense. At the time of filing this recommendation, ninety-nine (99) days elapsed since the date the company should have complied with the Commission's Order. Hence, the Commission could impose a penalty of \$2,500,000, however, staff believes that a penalty that large would be excessive. Conversely, staff believes that a penalty less than

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\$250,000 is not sufficient in this case due to the nature of the apparent slamming violations that are the subject of this docket. The company has yet to resolve at least thirty-five (35) complaints and make the customers whole through refunds for charges related to its apparent slamming activities.

Based on the aforementioned and the legal analysis cited in Issue 1, staff believes that UKI's failure to comply with the Commission's lawful Orders in Docket No. 020645-TI is a "willful violation" of said Orders, in the sense intended by Section 364.285, Florida Statutes, and thus, staff recommends that the Commission find that UKI has, by its inactions, willfully violated Order Nos. PSC-03-0990-PAA-TI and PSC-03-1078-CO-TI, and impose a \$250,000 penalty on the company to be paid to the Florida Public Service Commission.

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**Issue 4:** Should the Commission penalize Optical Telephone Corporation \$10,000 per apparent violation, for a total of \$340,000, for 34 apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

**Recommendation:** Yes. If Optical Telephone Corporation fails to request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If the company fails to pay the amount of the penalty within fourteen calendar days after issuance of the Consummating Order, registration number TJ551 should be removed from the register, the company's tariff should be cancelled, and the company should also be required to immediately cease and desist providing intrastate interexchange telecommunications services within Florida. **(Buys, Rojas)**

**Staff Analysis:** From January 3, 2003, through March 12, 2004, the Commission received forty (40) slamming complaints against Optical Telephone Corporation (Optical) from Florida consumers. Staff determined that thirty-four (34) of the slamming complaints appear to be violations of Rule 25-4.118, F.A.C., because the company failed to comply with the specific verification methodologies required by the Commission's slamming rules and the apparent egregious nature of the marketing utilized by the company.

In 11 cases, listed in Attachment Z, Optical failed to provide proof in the form of a TPV recording that the customer authorized Optical to change service providers in accordance with Rule 25-4.118(1) and (2), F.A.C. (refer to Issue 1 for expounded rule).

In 23 cases, listed in Attachment AA, the TPVs submitted by Optical did not contain all the specific verification information required by Rule 25-4.118(2)(c), F.A.C., listed in subsection (3)(a) 1. through 5. (refer to Issue 1 for expounded rule). Staff determined that the TPVs submitted by Optical were missing the following statements and information:

- The statement that the customer's change request will apply only to the number on the request and there must only be one presubscribed local, one presubscribed local toll, and one presubscribed toll provider for each number.
- The statement that the Local Exchange Carrier (LEC) may charge a fee for each provider change.
- Six (6) TPVs were missing the billing telephone number.

From September 28, 2001, through January 1, 2003, the Commission received 234 slamming complaints against Optical from Florida consumers. Staff determined that 202 of those complaints were apparent slamming infractions. Staff addressed the slamming instances with Optical beginning in April 2002. Staff informed the company of the deficiencies in the TPVs submitted in response to slamming complaints. In a meeting with staff, Optical indicated it would implement the necessary changes to its telemarketing and verification processes to eliminate slamming. The company appears to have taken some action to reduce the number of slamming complaints received since that time; however, recent complaints reference the same telemarketing and verification practices the company was utilizing prior to discussions with staff.

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Hence, it appears that the company has not taken the necessary actions to change its telemarketing and verification tactics.

In the slamming complaint filed by Oscar and Ana Dominguez, Request No. 554215T, the complainants claim in their letter that the company solicited a person visiting their home who was not authorized to switch carriers. They further claim that the TPV recording Optical played for them contained "leading questions" and that the recording is "extremely weird and not consecutive." They further stated, "It sounded as if different pieces of the recording were pasted after they would ask my visitor questions. . . ."

In the slamming complaint filed by Candido Mendoza, Request No. 531486T, Mr. Mendoza reported that he was charged by Optical for local toll calls. Upon contacting Optical, he was informed that his service had been switched and the customer representative played a recording where somebody answered questions regarding name and date of birth. Mr. Mendoza stated that the company informed him that the recording was made during a telemarketing offer they were conducting and somebody agreed to the offer and that was enough for Optical to bill him. The company did not provide a copy of the TPV in its response to the complaint.

Hence, staff believes that Optical has not changed its telemarketing and verification practices to comply with the Commission's slamming rule and based on the legal analysis cited in Issue 1, staff believes that Optical's failure to comply with the requirements of Rule 25-4.118, F.A.C. is a "willful violation" of Sections 364.603, Florida Statutes, in the sense intended by Section 364.285, Florida Statutes, and thus, staff recommends that the Commission find that Optical has, by its actions, willfully violated Sections 364.603, Florida Statutes, and impose a \$340,000 penalty on the company to be paid to the Florida Public Service Commission.

Issue 5: ~~If staff's recommendation in Issue 1, Issue 2, Issue 3, or Issue 4, is approved, and the company's registration number is removed from the register, and the company's tariff is cancelled, and the company is required to immediately cease and desist providing intrastate interexchange telecommunications services within Florida, the Commission should order any company that bills for any company to cease and desist billing Florida customers for said company? If, as a result of the Commission's Order resulting from this recommendation, any company is ordered to cease and desist providing intrastate interexchange telecommunications services in Florida, should the Commission also order any company that is providing billing services for the penalized company to stop billing in Florida for the affected company?~~

**Recommendation:** Yes. (Buys, L. Fordham, Rojas, Teitzman)

Staff Analysis: Due to the egregious nature of the companies' business practices and alleged violations addressed as discussed in this recommendation, staff believes that ~~it is additional measures may be necessary to prevent further improper conduct in the event the companies at issue are required for the Commission to issue a separate order to ensure that any billing activity, on behalf of a company ordered by the Commission to cease and desist providing interexchange service in Florida, would be blocked. It is reasonable to assume that the company would no longer require billing services if it is no longer authorized to provide service. Therefore, staff recommends that the Commission also direct all companies that are providing billing services for the companies addressed in Issues 1 – 4 to stop billing for said companies if they are ultimately required to cease and desist providing interexchange services in Florida. Staff believes this additional action is warranted, because it appears that any ability the subject companies have to continue billing through another company may serve as incentive to them to continue operating in violation of a Commission Order to the detriment of Florida consumers.~~

Pursuant to Section 364.604(2), Florida Statutes, a customer shall not be liable for any charges to telecommunications or information services that the customer did not order or that were not provided to the customer. Clearly, if the companies subject to this recommendation are ordered to cease and desist providing interexchange telecommunications services in Florida, customers will no longer be ordering services from said companies. Thus, any bills sent to a Florida customer for interexchange services provided by the penalized companies would inherently be for services that were either not ordered or could not be provided. All telecommunications companies in Florida, as well as IXC's, are subject to the statutory provision. As such, staff believes that the Commission is authorized to take this action.

In addition, staff believes that the Commission has the authority to take this additional action, because any company that continues to bill for the penalized companies will, in effect, be contributing to the ongoing violations of the underlying provider. Ultimately, the billing company will be aiding and abetting in either a "slam" in violation of Section 364.603, Florida Statutes, or an improper billing in violation of Section 364.604, Florida Statutes. All telecommunications companies, as well as IXC's, are subject to these statutes.

**Issue 6:** Should these dockets be closed?

**Recommendation:** The Order for each docket issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest in the respective docket within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Order is not protested, the docket should be closed administratively upon either receipt of the payment of the penalty from the respective company cited in each docket or upon the removal of the company's registration number from the register and cancellation of the company's tariff. A protest in one docket should not prevent the action in a separate docket from becoming final, nor should any action by the Commission preempt, including but not limited to any settlement, preclude or resolve any matters under review by any other Florida Agencies or Departments. **(L. Fordham, Rojas, Teitzman)**

**Staff Analysis:** The Order for each docket issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest in the respective docket within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Order is not protested, the docket should be closed administratively upon either receipt of the payment of the penalty from the respective company cited in each docket or upon the removal of the company's registration number from the register and cancellation of the company's tariff. A protest in one docket should not prevent the action in a separate docket from becoming final, nor should any action by the Commission preempt, including but not limited to any settlement, preclude or resolve any matters under review by any other Florida Agencies or Departments.



Date: April 21, 2004

**ILD**

**Telecommunications, Inc.**

March 3, 2003

Linda Dodson, Esquire  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Enclosed is the information requested by Subpoena Duces Tecum dated February 19, 2003 relating to UKI Communications, Inc. (TJ327), Optical Telephone Services (TJ551), Miko Telephone Communications, Inc. (TJ561) and World Communications Satellite Systems, Inc. (TJ564).

ILD requests that the enclosed information be treated as proprietary and confidential by the commission.

Please advise if there is any additional information ILD may provide.

Sincerely,



Kathy McQuade  
Vice President-Billing Services

Enc.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Undocketed Matter.

Subpoena Duces Tecum  
Without Deposition

THE STATE OF FLORIDA

TO: Intellicall Operator Services, Inc. d/b/a ILD (TI869), Records Custodian, 1270 Stone Street, Oviedo, Florida 32765-8463

**YOU ARE COMMANDED** to appear at the Florida Public Service Commission on March 7, 2003, and to have with you at that time and place the following:

The information listed in Attachment A for each of the following clients: UKI Communications, Inc. (TJ327; Optical Telephone Services (TJ551); Miko Telephone Communications, Inc. (TJ561), and World Communications Satellite Systems, Inc. (TJ564).

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above. You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. **THIS WILL NOT BE A DEPOSITION. NO TESTIMONY WILL BE TAKEN.**

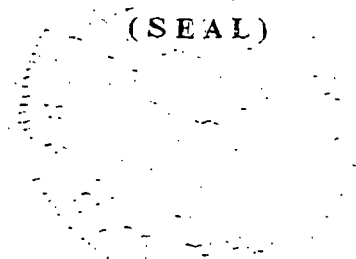
**YOU ARE SUBPOENAED** by the following attorney to (1) appear as specified, or (2) furnish the records instead of appearing as provided above, and unless excused from this subpoena by this attorney or the Commission you shall respond to this subpoena as directed.

DATED on February 19, 2003.

Blanca S. Bayó, Director  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing Services

Linda Dodson, Esq., 2540 Shumard Oak Blvd., Tallahassee FL 32399-0850  
Attorney for Florida Public Service Commission



Attachment A  
2/19/03 Subpoena Duces Tecum Without Deposition  
To Intellicall Operator Services, Inc. d/b/a ILD (TI869)

Provide the information listed below about each of the following clients: UKI Communications, Inc. (TJ327); Optical Telephone Services (TJ551); Miko Telephone Communications, Inc. (TJ561); and World Communications Satellite Systems, Inc. (TJ564).

1. A current, signed (by all parties) copy of the contract between ILD and each company.
2. All contact information ILD has for each company for all purposes (e.g., billing, complaints, contracts, payment, legal, financial, et cetera). The contact information should be separated by company and should be listed in the following format for each contact:

Type of Contact:  
 Name:  
 Title:  
 Mailing Address:

Physical Address:

Voice Number:                      Extension:  
 Fax Number:  
 (Other Number(s)):  
 Email Address:

3. The name and address (if from a company office) or financial institution (name, address, and telephone number) and account number, labeled by company, that ILD sends payments to or receives payment from each company.

All information should be furnished in writing, separated by company, and in an easily readable and understandable format as described above by March 7, 2003. ILD may request that any information it provides which it deems to be proprietary be handled as confidential by the Commission.

ILD Telecommunications, Inc.  
T1869

Florida Public Service Commission  
Subpoena Duces Tecum.

**1 Contract between ILD and Miko Telephone**

Enclosed-Attachment C

**2 Contact Information**

Type of Contact: Primary  
Name: Margaret Currie  
Title: President  
Mailing Address: 2100 Southbridge Parkway, Suite 650  
Birmingham, AL 35209

Physical Address: 2100 Southbridge Parkway, Suite 650  
Birmingham, AL 35209

Voice Number: 866-705-3082  
Fax Number: 866-228-9495  
Email Address: [miko@mikotelcom.net](mailto:miko@mikotelcom.net)

Type of Contact: Regulatory/Customer Service  
Name: Carlos Vivanco  
Title: Customer Service Manager  
Mailing Address: 2100 Southbridge Parkway, Suite 650  
Birmingham, AL 35209

Physical Address: 2100 Southbridge Parkway, Suite 650  
Birmingham, AL 35209

Voice Number: 866-705-3082  
Fax Number: 866-228-9495  
Email Address: [miko@mikotelcom.net](mailto:miko@mikotelcom.net)

**3 Financial Institution where ILD remits payment:**



Address where ILD remits payment:

720 Hembree Place  
Roswell, GA 30076

ILD Telecommunications, Inc.  
T1869

Florida Public Service Commission  
Subpoena Duces Tecum

**1 Contract between ILD and WCSS**

Enclosed-Attachment D

**2 Contact Information**

Type of Contact: Primary  
Name: Cathy Bergeron  
Title: President  
Mailing Address: **4301 Brittany Trail Drive**  
Champaign, IL 61822

Physical Address: 4301 Brittany Trail Drive  
Champaign, IL 61822

Voice Number: 866-647-2752  
Fax Number: 770-751-9558  
Email Address: [cbergeron21@hotmail.com](mailto:cbergeron21@hotmail.com)

Type of Contact: Regulatory/Customer Service  
Name: Mariana Bernal  
Title: Customer Service Manager  
Mailing Address: **4301 Brittany Trail Drive**  
Champaign, IL 61822

Physical Address: 4301 Brittany Trail Drive  
Champaign, IL 61822

Voice Number: 770-753-0061  
Fax Number: 770-753-0049  
Email Address: N/A

**3 Financial Institution where ILD remits payment:**



Address where ILD remits payment:

720 Hembree Place  
Roswell, GA 30076

ILD Telecommunications, Inc.  
T1869

Florida Public Service Commission  
Subpoena Duces Tecum

**1 Contract between ILD and UKI Communications**

Enclosed-Attachment A

**2 Contact Information**

Type of Contact: Primary  
Name: Joe Vitale  
Title: President  
Mailing Address: 400 East Atlantic Boulevard  
Pompano Beach, Florida 33060

Physical Address: 400 East Atlantic Boulevard  
Pompano Beach, Florida 33060

Voice Number: 800-641-7386  
Fax Number: 866-684-0487  
Email Address: [joe@ukicomunications.com](mailto:joe@ukicomunications.com)

Type of Contact: Regulatory/Customer Service  
Name: Renata Diás  
Title: Customer Service Manager  
Mailing Address: 701 SW 27 Avenue, Suite 701  
Miami, FL 33135

Physical Address: 701 SW 27 Avenue, Suite 701  
Miami, FL 33135

Voice Number: 800-641-7386  
Fax Number: 866-684-0457  
Email Address: [renata\\_dias@ukicomunications.net](mailto:renata_dias@ukicomunications.net)

**3 Financial Institution where ILD remits payment:**



Address where ILD remits payment:

400 East Atlantic Boulevard  
Pompano Beach, Florida 33060

ILD Telecommunications, Inc.  
T1869

Florida Public Service Commission  
Subpoena Duces Tecum

**1 Contract between ILD and Optical Telephone**

Enclosed-Attachment B

**2 Contact Information**

Type of Contact: Primary  
Name: Mark Frost  
Title: President  
Mailing Address: 2015 Midway Road, Suite 107  
Carrollton, TX 75006

Physical Address: 2015 Midway Road, Suite 107  
Carrollton, TX 75006

Voice Number: 877-260-7728  
Fax Number: 866-830-2365  
Email Address: [mark@opticalcorp.net](mailto:mark@opticalcorp.net)

Type of Contact: Regulatory/Customer Service  
Name: Bruce Cline  
Title: General Manager  
Mailing Address: 2015 Midway Road, Suite 107  
Carrollton, TX 75006

Physical Address: 2015 Midway Road, Suite 107  
Carrollton, TX 75006

Voice Number: 866-318-5480  
Fax Number: 866-830-2365  
Email Address: [bcline@opticalcorp.net](mailto:bcline@opticalcorp.net)

**3 Financial Institution where ILD remits payment:**



Address where ILD remits payment:

720 Hembree Place  
Roswell, GA 30076

Date: April 21, 2004

CORPORATE CROSS-GUARANTEE

For value received, in the consideration of ILD TELECOMMUNICATIONS, INC., a Delaware corporation ("ILD") selling billing and collection services and providing advances on billings unto AMERICA'S TELE-NETWORK CORP., a Delaware corporation, and its affiliates WEBNET COMMUNICATIONS, INC., a Virginia corporation, UKI COMMUNICATIONS, INC., a Nevada Corporation, AMERICA'S DIGITAL SATELLITE TELEPHONE CORPORATION, a Nevada Corporation, and WORLD COMMUNICATIONS SATELLITE SYSTEMS, INC., a Texas Corporation, and MIKO TELEPHONE COMMUNICATIONS, INC., an Alabama Corporation. (may be referred to individually as "Customer" or collectively as "Customers"), on standard ILD service and advance terms, each of the undersigned, as "Guarantor", hereby agrees as follows:

1. Each Guarantor hereby unconditionally guarantees to ILD the prompt repayment of advances and discharge when due of each and all obligations and indebtedness of Customers, for advances and/or services supplied by ILD. Each Guarantor's liability hereunder shall extend to and include all costs of collection and reasonable counsel fees.

2. In the event of default by any of the below signed Customers in payment and discharge when due of any of such Customer's obligations or of any installments due thereon, each Guarantor agrees to pay and otherwise make good such obligations upon demand in whatever form or however evidenced then owing by such Customer to ILD. This is a guaranty of payment.

3. Each Guarantor waives notice of non-performance on any Customer's part, notice of adjustment between ILD and any Customer and notice of default, extension, demand for payment and action to collect, if any, against any Customer, and notice of acceptance of this guaranty by ILD. Each Guarantor further waives any and all defenses the Guarantor might have by reason of any extension of time given to any Customer, or the acceptance by ILD of any security, guarantees or collateral, release or modifications made with respect to any Customer's indebtedness. This guaranty shall not be affected by the amount of credit extended hereunder nor by any change in the form of said indebtedness, by note or otherwise, nor by any extension or renewal of said indebtedness.

4. The guaranty hereby given is an absolute continuing guaranty and shall continue in full force until all amounts owing by any Customer to ILD for which each Guarantor is liable hereunder have been paid in full. Each Guarantor acknowledges and affirms that this guaranty is being made to induce ILD to extend credit to the Customers, knowing that ILD is relying upon this guaranty in extending such credit.

IN WITNESS WHEREOF, this Guarantee has been executed as of the date below.

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AMERICA'S TELE-NETWORK CORP.  
By: [Signature]  
Name: JOHN WHITE  
Title: PRESIDENT  
Date: 12/2/02

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WEBNET COMMUNICATIONS, INC.  
By: [Signature]  
Name: M. Harold Lewis  
Title: PRES.  
Date: 12/12/02



Date: April 21, 2004

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: Angie Morlan  
Name: Angie Morlan  
Title: manager

ATTEST:

By: [Signature]  
Name: [Signature]  
Title: [Signature]

ATTEST:

By: Geri Duty  
Name: Geri Duty  
Title: [Signature]

ATTEST:

By: [Signature]  
Name: [Signature]  
Title: operations manager

UKI COMMUNICATIONS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

AMERICA'S DIGITAL SATELLITE TELEPHONE CORPORATION

By: [Signature]  
Name: Damian Cignani  
Title: President  
Date: 12/11/02

WORLD COMMUNICATIONS SATELLITE SYSTEMS, INC.

By: [Signature]  
Name: Caterina Bergeron  
Title: President  
Date: 12/12/02

MIKO TELEPHONE COMMUNICATIONS, INC.

By: [Signature]  
Name: Margaret Corvick  
Title: President  
Date: 12/11/02

NEW CENTURY

By: Karyn Bartel  
Name: Karyn Bartel  
Title: President  
Date: 12/13/02

m | i | k | o

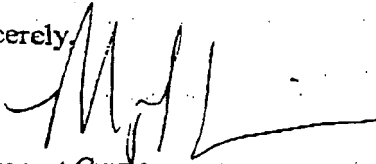
January 22, 2003

ILD Telecommunications, Inc.  
2600 Cumberland Parkway, Suite 2000  
Atlanta, GA 30339

Dear Ms. McQuade:

Effective immediately please cancel the cross guarantee on funding between MIKO Telephone Company (MIKO) and UKI Communications Inc. MIKO **will** no longer guarantee funding of account receivables for UKI.

Sincerely,



Margaret Currie  
President



OPTICAL TELEPHONE CORPORATION

January 22, 2003

ILD Telecommunications, Inc.  
2600 Cumberland Parkway, Suite 2000  
Atlanta, GA 30339

Dear Ms. McQuade:

Effective immediately please cancel the cross guarantee on funding between Optical Telephone Corporation (OTC) and UKI Communications Inc. OTC will no longer guarantee funding of account receivables for UKI.

Sincerely,

Mark Frost  
President



January 22, 2003

ILD Telecommunications, Inc.  
2600 Cumberland Parkway, Suite 2000  
Atlanta, GA 30339

Dear Ms. McQuade:

Effective immediately please cancel the cross guarantee on funding between World Communications Satellite Systems, Inc. (WCSS) and UKI Communications Inc. WCSS will no longer guarantee funding of account receivables for UKI.

Sincerely,



Cathy Bergeron  
President

## ILD Telecommunications, Inc. 1+ Billing and Collections Agreement

This Agreement is made this 30th day of July, 2001 by and between OTC, Inc  
("Customer"), an Alabama corporation, with its principal office at:  
600 Boulevard South Ste 104  
Huntsville, AL 35802

and ILD Telecommunications, Inc. ("ILD"), a Delaware corporation with its principal office located at:

16200 Addison Road, Suite 100.  
Addison, Texas 75001

### ARTICLE 1: SERVICES TO BE PROVIDED

1.1 ILD shall provide billing and collection services for call records supplied by Customer. Customer's messages shall be provided in a format reasonably acceptable to ILD and will be subject to the limitations described in Article 4 of this Agreement. ILD reserves the right to refuse billing if in its sole discretion it considers the message type to be of an objectionable nature, considers the rates to be in excess of normal industry standards or considers such billing to be in violation of the terms and conditions of its contracts with the Local Exchange Carriers (LECs).

1.2 Charges for billing and collection services shall be as specified in Schedule A attached hereto. As indicated in Schedule A, billing and collection charges to ILD by the Local Exchange Carriers (LECs) are passed through as additional charges which vary by LEC and which are subject to change without notice from the LEC. These pass-through charges include but are not limited to the following:

- a. LEC per message bill rendered and per message charges.
- b. Specific unbillable Customer calls (e.g. vacant number or coin).
- c. Prorata portion of unbillable calls from those LECs that do not provide unbillable call detail. This prorata amount will be calculated from the proportion which the total dollar amount of Customer calls bears to the total of all calls billed through ILD for the period involved. Such calculations may be by LEC or Revenue Accounting Office (RAO) within the LEC.
- d. Bad debt allowance holdbacks. Initial holdbacks will be set at eight percent (8.00%) for those LECs that utilize holdbacks. Once sufficient uncollectible data is supplied to ILD by each LEC (timeframes vary on a LEC by LEC basis), Customer's holdbacks will be set on a LEC-by LEC basis to be determined by Customer's actual uncollectible bad debt experience. LEC uncollectible bad debt true-ups will be passed through to Customer in accordance with each LEC's true-up policies and procedures.
- e. Specific identifiable adjustments due to ILD or the LEC determining the message(s) to be uncollectible.
- f. Prorata portion of adjustments for uncollectible calls that cannot be identified to a specific customer.
- g. Programming and development fees for regulatory requirements such as sub-carrier billing identification.

### ARTICLE 2: SECURITY

Customer hereby grants ILD a continuing security interest in and a right of offset against all accounts receivable of Customer which arise in connection with any message billed by ILD. This security interest and right of offset is intended to secure all Customer's obligations and liabilities to ILD under this Agreement or otherwise. ILD reserves the right to deduct the proceeds of any product offering to which Customer subscribes to secure the debt on any other product. Notwithstanding the foregoing, if Customer elects to participate in ILD's Advanced Payment Agreement, then the submission of call records by Customer shall constitute a sale and transfer by Customer to ILD of such call records, free and clear of any liens or encumbrances, subject to the terms and conditions of the Advanced Payment Agreement.

Please mail originals to: ILD Telecommunications, Inc.  
Billing Services Division, 5213 NW 33<sup>rd</sup> Avenue, Ft. Lauderdale, Florida 33309

**ARTICLE 3: SETTLEMENT**

Billing documents will be prepared by ILD for each message tape received from Customer. Settlement will occur sixty (60) days from the end of the billing month (i.e. tapes submitted for April billing will be settled on June 30). Any and all charges due ILD by Customer for the settlement month will be deducted from the settlement. The settlement document will provide the following information:

- a. The total number of Customer messages forwarded for billing and the charges therefore in accordance with Schedule A attached.
- b. The gross dollar amount of all messages billed by ILD for Customer.
- c. The total number of end user inquiries handled by ILD's customer service department and the charges therefor in accordance with Schedule A attached hereto and made a part hereof.
- d. Summary of charges for the LEC pass-throughs related to the messages billed under Item B above. These pass-throughs will include those enumerated in Article 1.2 and Schedule A and any other charges assessed by the LEC relating to the messages.
- e. True-ups reflecting changes in the actual charges, uncollectible reserves, etc. of the associated LECs.
- f. Chargebacks for calls returned by the LEC's or refunded by ILD.
- g. Network fees.
- h. Miscellaneous charges such as express delivery fees, wire transfer fees, or any other charges applicable to Customer for the settlement month.

In the event that Customer cancels this Agreement or there is insufficient billing previously submitted to cover anticipated future LEC adjustments and bad debt, ILD reserves the right to withhold a portion or all of Customer's settlement until such time as it feels is necessary for the LECs to process all aforementioned adjustments and bad debt. In the event that there are insufficient funds held to cover these expenses, an invoice showing the amount due ILD will be sent to Customer; Customer agrees to pay this invoice immediately upon receipt.

**ARTICLE 4: LIMITATIONS**

Customer hereby acknowledges that ILD is limited to providing intra-state billing and collection services in those states where Customer has a Certificate of Authority or a certificate or tariff is not required. Customer must provide proof of necessary certifications and/or tariffs for each applicable state. Customer represents and warrants that all messages submitted to ILD for billing and collection under the terms of this Agreement will have been validated through an industry recognized LIDB validation service provider. Additionally, Customer agrees to show ILD proof of an active Line Information Database ("LIDB") validation agreement upon request. Furthermore, Customer acknowledges its understanding that ILD is also limited to provide billing and collection services in those areas where it has agreements with the LECs. Upon request, ILD will provide Customer with its on net/off net file on a monthly basis at no additional charge to Customer. It is understood by Customer that each LEC has certain restrictions as to the age of any message that may be outcleared through its Billing and Collection Agreement. Any message sent to ILD for outclearing that exceeds this age limit will be rejected by ILD and returned to Customer. ILD will provide a list of message age limits by LEC upon request of Customer.

**ARTICLE 5: WARRANTY AND LIMITATION OF LIABILITY**

THE WARRANTIES AND REMEDIES SET FORTH HEREIN CONSTITUTE THE ONLY WARRANTIES AND REMEDIES WITH RESPECT TO THE SERVICES AND FACILITIES PROVIDED BY ILD OR ANY BREACH BY ILD HEREUNDER. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE. IN NO EVENT SHALL ILD BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUES, REGARDLESS OF THE FORESEEABILITY THEREOF, OCCASIONED BY ILD'S PERFORMANCE OF, OR FAILURE TO PERFORM, ITS OBLIGATIONS HEREUNDER.

#### ARTICLE 6: CONFIDENTIALITY

The parties to this Agreement shall treat this Agreement, its notices and Exhibits and their terms and conditions, as strictly confidential. Neither party shall disclose any of this information or any of these materials to any person who is not a party to or of this Agreement. The parties acknowledge that, in the event of an unauthorized disclosure, the damages suffered by the non-disclosing party may be difficult if not impossible to ascertain, and that such non-disclosing party may seek injunctive relief as well as monetary damages against the breaching party.

#### ARTICLE 7: TERMINATION

Either party may cancel this Agreement upon ninety (90) days written notice prior to any scheduled renewal date as defined in Article 21 of this Agreement. ILD reserves the right to cancel this Agreement immediately upon notification by any LEC of unusually large uncollectibles, unbillables or adjustments. If Customer cancels this Agreement with ILD, funds for the final settlement will be held as outlined in Article 3.

#### ARTICLE 8: REPRESENTATION AND WARRANTIES

By signing this Agreement, Customer attests to the fact that the billings presented to ILD for outclearing are not subject to any offset, lien, dispute or counterclaim.

#### ARTICLE 9: FINANCIAL STATEMENTS

Upon the request of ILD, Customer shall furnish quarterly financial statements or equivalent financial information. This information shall be compiled in compliance with GAAP (Generally Accepted Accounting Principles) by an independent accounting or auditing firm.

#### ARTICLE 10: ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Customer shall not assign, sublet, delegate, or transfer any of its rights or obligations hereunder without the prior written consent of ILD, which consent shall not be unreasonably withheld or delayed. For purposes hereof, the following shall also constitute an assignment: (a) any merger, consolidation or reorganization to which Customer is a party, (b) the sale or transfer of all or substantially all the assets of Customer, (c) the sale, issuance or transfer of any voting securities of Customer which result in a change of control of Customer.

#### ARTICLE 11: SEVERABILITY

In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall be unimpaired, and shall remain in effect and be binding upon the parties.

#### ARTICLE 12: WAIVER

The delay or failure of ILD to enforce or insist upon compliance with any of the terms or conditions of this Agreement or to exercise any remedy provided herein, the waiver of any term or condition of this Agreement, or the granting of an extension of time for performance, shall not constitute the permanent waiver of any term, condition or remedy of or under this Agreement, and this Agreement and each of its provisions shall remain at all times in full force and effect until modified as provided herein.

#### ARTICLE 13: FORCE MAJEURE

Notwithstanding anything to the contrary herein, ILD shall not be liable to Customer or any other person or entity for loss or damage or deemed to be in breach of this Agreement due to ILD's failure of performance, wholly or in part, under this Agreement if such non-performance is due to causes beyond ILD's reasonable control, including without limitation, acts of God; fire, explosion, vandalism, storm or other natural occurrences; any law, order, regulation, direction, action or request of the United States government (including without limitation, state and local governments having jurisdiction over any of the parties) or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more of such governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; strikes, lockouts, work stoppages or other such labor difficulties; or any act or omission of any other person or entity. Any delay resulting therefrom shall extend performance accordingly or excuse performance by ILD, in whole or in part.

#### ARTICLE 14: INDEMNIFICATION

Customer shall defend, indemnify and hold harmless ILD, its affiliates, their respective officers, directors, shareholders, employees, agents, successors and assigns, and each of them, from and against, any and all damages, losses, claims, liabilities, demands, charges, suits, penalties, costs or expenses, whether accrued, absolute, contingent or otherwise, including but not limited to court costs and attorneys' fees, which any of the foregoing may incur or to which any of the foregoing may be subjected, arising out of or otherwise based upon any of the following:

- a. Any breach or default by either party or under any of the provisions of this Agreement or of any other agreement or instrument to which either party or an affiliate of either party is a party or which is in favor of either party or an affiliate of either party (for purposes hereof, an "affiliate" of either party shall include any person or entity controlling, controlled by or under common control with either party);
- b. Claims of any third party or entity for libel, slander, infringement of copyright, or unauthorized use of trademark, trade name, or service mark arising out of material, data, information, or other content transmitted by Customer over ILD's network; or
- c. Claims of any third party or entity for damages, losses, or injuries arising out of any act or omission of Customer or its agents, servants, employees, contractors, or representatives.

#### ARTICLE 15: SURVIVAL

The covenants and agreements of Customer contained in this Agreement with respect to payment of amounts due and indemnification shall survive any termination of this Agreement.

#### ARTICLE 16: UNLAWFUL PURPOSE

The services provided by ILD are subject to the condition that they will not be used for any unlawful purposes.

#### ARTICLE 17: MODIFICATIONS IN WRITING

Except as otherwise provided herein, no subsequent Agreement between ILD and Customer shall be effective or binding unless it is made in writing and signed by both parties.

#### ARTICLE 18: SUIT FOR ENFORCEMENT

In the event suit is brought or an attorney is retained by ILD to enforce the terms of this Agreement or to collect any money as due hereunder or to collect any money damages for breach thereof, ILD shall be entitled to recover, in addition to any other remedy, the reimbursement for reasonable attorneys fees, court costs, cost of investigations and other related expenses incurred in connection therewith.



**ARTICLE 19: CONSTRUCTION**

This Agreement shall be governed by and construed under the laws of the state of Texas. This Agreement shall be binding upon Customer, its successors and assigns.

**ARTICLE 20: NOTICES**

All notices which the parties are required or may desire to serve on each other under or in connection with this Agreement shall be served in writing by registered or certified mail, postage prepaid or prepaid telegram or telex or personal service, addressed as follows:

If to ILD:

ILD Telecommunications, Inc.  
5213 NW 33<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33309  
Attn: Kathy McQuade, Director - Billing Services

If to Customer:

OTC, Inc  
600 Boulevard South Suite 104  
Huntsville, AL 35802  
Attn: MARK FROST, President

Notice sent by mail shall become effective on the fourth business day after mailing. Notice sent via overnight service, using a nationally recognized courier service (which shall include Federal Express, Airborne Express and United Parcel Service), shall become effective on the day after sending. Notice delivered personally shall become effective on receipt.

**ARTICLE 21: TERM**

The initial term of this Agreement shall commence on the date of Customer's first billing message submittal to ILD and shall continue in full force and effect for a period of twelve (12) months. This Agreement shall be automatically extended for successive one year periods thereafter unless canceled by either party with ninety (90) days written notice pursuant to Article 7 of this Agreement.

**ARTICLE 22: TAXES**

Customer grants ILD full authority on its behalf to authorize the LECs to apply taxes associated with billing and collections services in the same manner in which they apply these taxes to their own end users.

ILD, based solely on the information provided by the LECs will file and remit applicable taxes to the appropriate taxing authority. Customer agrees that ILD is acting only as Customer's agent with respect to the billing and collection of taxes. ILD will have no liability whatsoever to Customer for incorrect information supplied by the LECs. Customer will indemnify and hold ILD harmless from and against any and all claims, actions, damages, liabilities, costs and expenses, including without limitation reasonable attorneys' fees and expenses, that are asserted against or incurred by ILD as a result of or in connection with any of these said tax items.

Customer will be solely responsible for calculating, and advising ILD with respect to, any Foreign Intrastate Taxes and any other taxes that are not calculated by the LEC.

**ARTICLE 23: INQUIRY SERVICE**

Customer acknowledges that the telephone number printed on the end user bill page as the first point of inquiry will be that of ILD. Customer and ILD recognize and acknowledge that some LECs demand that the LEC itself perform the customer inquiry function. In these cases, the charges associated with the LEC inquiry services will be passed through at ILD's cost to Customer. Calls that the LEC cannot handle such as rate disputes will be referred to ILD's Customer Service Department for handling. Customer grants ILD or its agent full authority to make adjustments or

Date: April 21, 2004

Standard B&C Agreement  
Page 6 of 8

to authorize the LECs to make adjustments on calls when ILD deems it warranted. ILD will provide any end user with Customer's name, address and telephone number upon demand. Charges for inquiry services provided by LD shall be as specified in Schedule A attached hereto and made a part hereof. Customer agrees to provide ILD with a list of its current rate schedules and certifications prior to ILD releasing billing on Customer's behalf to enable LD to perform proper customer service functions. Upon request by ILD, Customer further agrees to provide the location information of any telephone number designated as origination numbers on Customer's billing files/tapes/diskettes.

LD will make every effort to refer all inquiry calls to Customer. However, Customer realizes and acknowledges that LD may handle some of Customer's inquiry due to certain circumstances, including but not limited to: 1) an outage in Customer's operator center, or 2) an end user refusing to deal with Customer and demanding that ILD handle the inquiry, or 3) high volumes in Customer's operator center resulting in long hold times for end user inquiry calls, or 4) a LEC demanding that ILD resolve an end user billing issue. In these circumstances, Customer grants ILD or its agent full authority to make adjustments or to authorize the LECs to make adjustments on calls when ILD deems it warranted.

If at any time ILD, in its sole discretion, determines that Customer is not providing sufficient end user inquiry customer service, ILD reserves the right to handle all prospective customer end user inquiries until such time that Customer and ILD can mutually agree upon the terms under which Customer may resume providing such service. In the event of ILD "taking back" inquiry services from Customer, Customer shall be notified in writing immediately. The charges for ILD handling inquiry services shall be as outlined in Schedule A on a per inquiry call handled by ILD customer service representative basis.

#### ARTICLE 24: CHANGES IN PRICING

The pricing set forth in the schedules attached hereto is subject to change upon thirty (30) days' written notice from ILD.

#### ARTICLE 25: MISCELLANEOUS PROVISIONS

- a. Time is of the essence. Time is of the essence in this Agreement.
- b. Previously/Concurrently billed messages. By submitting billing to ILD, Customer represents that none of said messages have been previously billed to the end user in any form or format.
- c. Special Requests. Special requests by Customer such as unique reports or any other requests not provided in the normal course of business will be reviewed in good faith by ILD. ILD agrees to obtain prior written approval from Customer with respect to any charges over and above the normal billing and collection charges outlined in this Agreement. Customer understands and agrees that any such charges will be deducted from the settlement for the month in which said charges are incurred.

Date: April 21, 2004

Standard B&C Agreement  
Page 7 of 8

IN WITNESS WHEREOF, Customer and ILD have executed this Agreement as of the day and year shown below.

ILD TELECOMMUNICATIONS, INC.

CUSTOMER

By: [Signature]  
Authorized Representative

By: [Signature]  
(Signature)

Mark Frost  
(Print Name)

President  
(Title)

7-30-01  
(Date Received)

6-5-01  
(Date)

**SCHEDULE A**

**PRICE PER MESSAGE FORWARDED FOR BILLING AND COLLECTION  
 FOR A RATED AND FORMATTED BILLING FILE, TAPE, OR DISKETTE (See NOTE below)**

Per Month Charges

<u>Messages</u>	<u>Per Month Charges</u>
0 – 500,000	[REDACTED]
500,001 – 1,000,000	[REDACTED]
1,000,001 – 2,000,000	[REDACTED]
2,000,001 – 5,000,000	[REDACTED]
5,000,001 – 10,000,000	[REDACTED]
10,000,000 and Over	[REDACTED]

NOTE: Excludes LEC Billing Pass-Throughs and is subject to a minimum charge of [REDACTED] per month.

- a. LEC billing will be at ILD's current LEC cost per message for particular LEC.
- b. Unbillable calls rejected by the LECs that provide detail will be charged back to Customer.
- c. Unbillable calls rejected by the LECs that do not provide detail will be shared prorata.
- d. Specifically identified adjustments for uncollectible calls will be charged back to Customer.
- e. Bulk adjustments for uncollectible calls will be shared prorata.
- f. Express mailings will be charged to Customer at the rate the Express Service Company uses to charge ILD. ILD will use the company of its choice for express mailings.
- g. Special programming requests will be at the rate of \$75 per hour with a three (3) hour minimum.

Inquiry Service Fees:

A) For all LEC's that ILD performs primary inquiry services, the following fees will be charged to Customer:

[REDACTED] per inquiry call handled by ILD customer service representatives

Any corresponding reduction in ILD's LEC billing cost per message as a result of ILD performing primary inquiry services will be entirely passed-through to Customer.

B) For all LECs that ILD performs secondary inquiry services, the following fees will be charged to Customer:

[REDACTED] per inquiry call handled by ILD customer services representatives

C) For all customer service inquiry calls that ILD transfers to Customer, the following fees will be charged to Customer:

[REDACTED] per transferred call

**ILD Telecommunications, Inc.  
1+ Billing and Collections Agreement**

This Agreement is made this 10 day of April, 2001 by and between "WCSS, INC."  
("Customer"), a TEXAS corporation, with its principal office at: World Communications  
3730 Kerbal Dr. Ste 1200 Satellite Systems, Inc.  
Houston, TX 77098

and ILD Telecommunications, Inc. ("ILD"), a Delaware corporation with its principal office located at:

16200 Addison Road, Suite 100  
Addison, Texas 75001

**ARTICLE 1: SERVICES TO BE PROVIDED**

1.1 ILD shall provide billing and collection services for call records supplied by Customer. Customer's messages shall be provided in a format reasonably acceptable to ILD and will be subject to the limitations described in Article 4 of this Agreement. ILD reserves the right to refuse billing if in its sole discretion it considers the message type to be of an objectionable nature, considers the rates to be in excess of normal industry standards or considers such billing to be in violation of the terms and conditions of its contracts with the Local Exchange Carriers (LECs).

1.2 Charges for billing and collection services shall be as specified in Schedule A attached hereto. As indicated in Schedule A, billing and collection charges to ILD by the Local Exchange Carriers (LECs) are passed through as additional charges which vary by LEC and which are subject to change without notice from the LEC. These pass-through charges include but are not limited to the following:

- a. LEC per message bill rendered and per message charges.
- b. Specific unbillable Customer calls (e.g. vacant number or coin).
- c. Prorata portion of unbillable calls from those LECs that do not provide unbillable call detail. This prorata amount will be calculated from the proportion which the total dollar amount of Customer calls bears to the total of all calls billed through ILD for the period involved. Such calculations may be by LEC or Revenue Accounting Office (RAO) within the LEC.
- d. Bad debt allowance holdbacks. Initial holdbacks will be set at eight percent (8.00%) for those LECs that utilize holdbacks. Once sufficient uncollectible data is supplied to ILD by each LEC (timeframes vary on a LEC by LEC basis), Customer's holdbacks will be set on a LEC by LEC basis to be determined by Customer's actual uncollectible bad debt experience. LEC uncollectible bad debt true-ups will be passed through to Customer in accordance with each LEC's true-up policies and procedures.
- e. Specific identifiable adjustments due to ILD or the LEC determining the message(s) to be uncollectible.
- f. Prorata portion of adjustments for uncollectible calls that cannot be identified to a specific customer.
- g. Programming and development fees for regulatory requirements such as sub-carrier billing identification.

**ARTICLE 2: SECURITY**

Customer hereby grants ILD a continuing security interest in and a right of offset against all accounts receivable of Customer which arise in connection with any message billed by ILD. This security interest and right of offset is intended to secure all Customer's obligations and liabilities to ILD under this Agreement or otherwise. ILD reserves the right to deduct the proceeds of any product offering to which Customer subscribes to secure the debt on any other product. Notwithstanding the foregoing, if Customer elects to participate in ILD's Advanced Payment Agreement, then the submission of call records by Customer shall constitute a sale and transfer by Customer to ILD of such call records, free and clear of any liens or encumbrances, subject to the terms and conditions of the Advanced Payment Agreement.

**ARTICLE 3: SETTLEMENT**

Billing documents will be prepared by ILD for each message tape received from Customer. Settlement will occur sixty (60) days from the end of the billing month (i.e. tapes submitted for April billing will be settled on June 30). Any and all charges due ILD by Customer for the settlement month will be deducted from the settlement. The settlement document will provide the following information:

- a. The total number of Customer messages forwarded for billing and the charges therefore in accordance with Schedule A attached.
- b. The gross dollar amount of all messages billed by ILD for Customer.
- c. The total number of end user inquiries handled by ILD's customer service department and the charges therefor in accordance with Schedule A attached hereto and made a part hereof.
- d. Summary of charges for the LEC pass-throughs related to the messages billed under Item B above. These pass-throughs will include those enumerated in Article 1.2 and Schedule A and any other charges assessed by the LEC relating to the messages.
- e. True-ups reflecting changes in the actual charges, uncollectible reserves, etc. of the associated LECs.
- f. Chargebacks for calls returned by the LEC's or refunded by ILD.
- g. Network fees.
- h. Miscellaneous charges such as express delivery fees, wire transfer fees, or any other charges applicable to Customer for the settlement month.

In the event that Customer cancels this Agreement or there is insufficient billing previously submitted to cover anticipated future LEC adjustments and bad debt, ILD reserves the right to withhold a portion or all of Customer's settlement until such time as it feels is necessary for the LECs to process all aforementioned adjustments and bad debt. In the event that there are insufficient funds held to cover these expenses, an invoice showing the amount due ILD will be sent to Customer; Customer agrees to pay this invoice immediately upon receipt.

**ARTICLE 4: LIMITATIONS**

Customer hereby acknowledges that ILD is limited to providing intra-state billing and collection services in those states where Customer has a Certificate of Authority or a certificate or tariff is not required. Customer must provide proof of necessary certifications and/or tariffs for each applicable state. Customer represents and warrants that all messages submitted to ILD for billing and collection under the terms of this Agreement will have been validated through an industry recognized LIDB validation service provider. Additionally, Customer agrees to show ILD proof of an active Line Information Database ("LIDB") validation agreement upon request. Furthermore, Customer acknowledges its understanding that ILD is also limited to provide billing and collection services in those areas where it has agreements with the LECs. Upon request, ILD will provide Customer with its on net/off net file on a monthly basis at no additional charge to Customer. It is understood by Customer that each LEC has certain restrictions as to the age of any message that may be outcleared through its Billing and Collection Agreement. Any message sent to ILD for outclearing that exceeds this age limit will be rejected by ILD and returned to Customer. ILD will provide a list of message age limits by LEC upon request of Customer.

**ARTICLE 5: WARRANTY AND LIMITATION OF LIABILITY**

THE WARRANTIES AND REMEDIES SET FORTH HEREIN CONSTITUTE THE ONLY WARRANTIES AND REMEDIES WITH RESPECT TO THE SERVICES AND FACILITIES PROVIDED BY ILD OR ANY BREACH BY ILD HEREUNDER. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE. IN NO EVENT SHALL ILD BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUES, REGARDLESS OF THE FORESEEABILITY THEREOF, OCCASIONED BY ILD'S PERFORMANCE OF, OR FAILURE TO PERFORM, ITS OBLIGATIONS HEREUNDER.

#### ARTICLE 6: CONFIDENTIALITY

The parties to this Agreement shall treat this Agreement, its notices and Exhibits and their terms and conditions, as strictly confidential. Neither party shall disclose any of this information or any of these materials to any person who is not a party to or of this Agreement. The parties acknowledge that, in the event of an unauthorized disclosure, the damages suffered by the non-disclosing party may be difficult if not impossible to ascertain, and that such non-disclosing party may seek injunctive relief as well as monetary damages against the breaching party.

#### ARTICLE 7: TERMINATION

Either party may cancel this Agreement upon ninety (90) days written notice prior to any scheduled renewal date as defined in Article 21 of this Agreement. ILD reserves the right to cancel this Agreement immediately upon notification by any LEC of unusually large uncollectibles, unbillables or adjustments. If Customer cancels this Agreement with ILD, funds for the final settlement will be held as outlined in Article 3.

#### ARTICLE 8: REPRESENTATION AND WARRANTIES

By signing this Agreement, Customer attests to the fact that the billings presented to ILD for outclearing are not subject to any offset, lien, dispute or counterclaim.

#### ARTICLE 9: FINANCIAL STATEMENTS

Upon the request of ILD, Customer shall furnish quarterly financial statements or equivalent financial information. This information shall be compiled in compliance with GAAP (Generally Accepted Accounting Principles) by an independent accounting or auditing firm.

#### ARTICLE 10: ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Customer shall not assign, sublet, delegate, or transfer any of its rights or obligations hereunder without the prior written consent of ILD, which consent shall not be unreasonably withheld or delayed. For purposes hereof, the following shall also constitute an assignment: (a) any merger, consolidation or reorganization to which Customer is a party, (b) the sale or transfer of all or substantially all the assets of Customer, (c) the sale, issuance or transfer of any voting securities of Customer which result in a change of control of Customer.

#### ARTICLE 11: SEVERABILITY

In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall be unimpaired, and shall remain in effect and be binding upon the parties.

#### ARTICLE 12: WAIVER

The delay or failure of ILD to enforce or insist upon compliance with any of the terms or conditions of this Agreement or to exercise any remedy provided herein, the waiver of any term or condition of this Agreement, or the granting of an extension of time for performance, shall not constitute the permanent waiver of any term, condition or remedy of or under this Agreement, and this Agreement and each of its provisions shall remain at all times in full force and effect until modified as provided herein.

Date: April 21, 2004

Standard B&amp;C Agreement

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**ARTICLE 13: FORCE MAJEURE**

Notwithstanding anything to the contrary herein, ILD shall not be liable to Customer or any other person or entity for loss or damage or deemed to be in breach of this Agreement due to ILD's failure of performance, wholly or in part, under this Agreement if such non-performance is due to causes beyond ILD's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, storm or other natural occurrences; any law, order, regulation, direction, action or request of the United States government (including without limitation, state and local governments having jurisdiction over any of the parties) or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more of such governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; strikes, lockouts, work stoppages or other such labor difficulties; or any act or omission of any other person or entity. Any delay resulting therefrom shall extend performance accordingly or excuse performance by ILD, in whole or in part.

**ARTICLE 14: INDEMNIFICATION**

Customer shall defend, indemnify and hold harmless ILD, its affiliates, their respective officers, directors, shareholders, employees, agents, successors and assigns, and each of them, from and against, any and all damages, losses, claims, liabilities, demands, charges, suits, penalties, costs or expenses, whether accrued, absolute, contingent or otherwise, including but not limited to court costs and attorneys' fees, which any of the foregoing may incur or to which any of the foregoing may be subjected, arising out of or otherwise based upon any of the following:

- a. Any breach or default by either party of or under any of the provisions of this Agreement or of any other agreement or instrument to which either party or an affiliate of either party is a party or which is in favor of either party or an affiliate of either party (for purposes hereof, an "affiliate" of either party shall include any person or entity controlling, controlled by or under common control with either party),
- b. Claims of any third party or entity for libel, slander, infringement of copyright, or unauthorized use of trademark, trade name, or service mark arising out of material, data, information, or other content transmitted by Customer over ILD's network, or
- c. Claims of any third party or entity for damages, losses, or injuries arising out of any act or omission of Customer or its agents, servants, employees, contractors, or representatives.

**ARTICLE 15: SURVIVAL**

The covenants and agreements of Customer contained in this Agreement with respect to payment of amounts due and indemnification shall survive any termination of this Agreement.

**ARTICLE 16: UNLAWFUL PURPOSE**

The services provided by ILD are subject to the condition that they will not be used for any unlawful purposes.

**ARTICLE 17: MODIFICATIONS IN WRITING**

Except as otherwise provided herein, no subsequent Agreement between ILD and Customer shall be effective or binding unless it is made in writing and signed by both parties.

**ARTICLE 18: SUIT FOR ENFORCEMENT**

In the event suit is brought or an attorney is retained by ILD to enforce the terms of this Agreement or to collect any money as due hereunder or to collect any money damages for breach thereof, ILD shall be entitled to recover, in addition to any other remedy, the reimbursement for reasonable attorneys fees, court costs, cost of investigations and other related expenses incurred in connection therewith.



**ARTICLE 19: CONSTRUCTION**

This Agreement shall be governed by and construed under the laws of the state of Texas. This Agreement shall be binding upon Customer, its successors and assigns.

**ARTICLE 20: NOTICES**

All notices which the parties are required or may desire to serve on each other under or in connection with this Agreement shall be served in writing by registered or certified mail, postage prepaid or prepaid telegram or telex or personal service, addressed as follows:

If to ILD:

ILD Telecommunications, Inc.  
5213 NW 33<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33309  
Attn: Kathy McQuade, Director - Billing Services

If to Customer:

WCSS, INC  
3730 Kerby Dr. Ste 1200  
Houston, TX 77098  
Attn: Caterina Bergeron

Notice sent by mail shall become effective on the fourth business day after mailing. Notice sent via overnight service, using a nationally recognized courier service (which shall include Federal Express, Airborne Express and United Parcel Service), shall become effective on the day after sending. Notice delivered personally shall become effective on receipt.

**ARTICLE 21: TERM**

The initial term of this Agreement shall commence on the date of Customer's first billing message submittal to ILD and shall continue in full force and effect for a period of twelve (12) months. This Agreement shall be automatically extended for successive one year periods thereafter unless canceled by either party with ninety (90) days written notice pursuant to Article 7 of this Agreement.

**ARTICLE 22: TAXES**

Customer grants ILD full authority on its behalf to authorize the LECs to apply taxes associated with billing and collections services in the same manner in which they apply these taxes to their own end users.

ILD, based solely on the information provided by the LECs will file and remit applicable taxes to the appropriate taxing authority. Customer agrees that ILD is acting only as Customer's agent with respect to the billing and collection of taxes. ILD will have no liability whatsoever to Customer for incorrect information supplied by the LECs. Customer will indemnify and hold ILD harmless from and against any and all claims, actions, damages, liabilities, costs and expenses, including without limitation reasonable attorneys' fees and expenses, that are asserted against or incurred by ILD as a result of or in connection with any of these said tax items.

Customer will be solely responsible for calculating, and advising ILD with respect to, any Foreign Intrastate Taxes and any other taxes that are not calculated by the LEC.

**ARTICLE 23: INQUIRY SERVICE**

Customer acknowledges that the telephone number printed on the end user bill page as the first point of inquiry will be that of ILD. Customer and ILD recognize and acknowledge that some LECs demand that the LEC itself perform the customer inquiry function. In these cases, the charges associated with the LEC inquiry services will be passed through at ILD's cost to Customer. Calls that the LEC cannot handle such as rate disputes will be referred to ILD's Customer Service Department for handling. Customer grants ILD or its agent full authority to make adjustments or

to authorize the LECs to make adjustments on calls when ILD deems it warranted. ILD will provide any end user with Customer's name, address and telephone number upon demand. Charges for inquiry services provided by ILD shall be as specified in Schedule A attached hereto and made a part hereof. Customer agrees to provide ILD with a list of its current rate schedules and certifications prior to ILD releasing billing on Customer's behalf to enable ILD to perform proper customer service functions. Upon request by ILD, Customer further agrees to provide the location information of any telephone number designated as origination numbers on Customer's billing files/tapes/diskettes.

ILD will make every effort to refer all inquiry calls to Customer. However, Customer realizes and acknowledges that ILD may handle some of Customer's inquiry due to certain circumstances, including but not limited to, 1) an outage in Customer's operator center, or 2) an end user refusing to deal with Customer and demanding that ILD handle the inquiry, or 3) high volumes in Customer's operator center resulting in long hold times for end user inquiry calls, or 4) a LEC demanding that ILD resolve an end user billing issue. In these circumstances, Customer grants ILD or its agent full authority to make adjustments or to authorize the LECs to make adjustments on calls when ILD deems it warranted.

If at any time ILD, in its sole discretion, determines that Customer is not providing sufficient end user inquiry customer service, ILD reserves the right to handle all prospective customer end user inquiries until such time that Customer and ILD can mutually agree upon the terms under which Customer may resume providing such service. In the event of ILD "taking back" inquiry services from Customer, Customer shall be notified in writing immediately. The charges for ILD handling inquiry services shall be as outlined in Schedule A on a per inquiry call handled by ILD customer service representative basis.

#### ARTICLE 24: CHANGES IN PRICING

The pricing set forth in the schedules attached hereto is subject to change upon thirty (30) days' written notice from ILD.

#### ARTICLE 25: MISCELLANEOUS PROVISIONS

- a. Time is of the essence. Time is of the essence in this Agreement.
- b. Previously/Concurrently billed messages. By submitting billing to ILD, Customer represents that none of said messages have been previously billed to the end user in any form or format.
- c. Special Requests. Special requests by Customer such as unique reports or any other requests not provided in the normal course of business will be reviewed in good faith by ILD. ILD agrees to obtain prior written approval from Customer with respect to any charges over and above the normal billing and collection charges outlined in this Agreement. Customer understands and agrees that any such charges will be deducted from the settlement for the month in which said charges are incurred.

IN WITNESS WHEREOF, Customer and ILD have executed this Agreement as of the day and year shown below.

ILD TELECOMMUNICATIONS, INC.

CUSTOMER

By: [Signature]  
Authorized Representative

By: [Signature]  
(Signature)

CATERINA BERGERON  
(Print Name)

PRESIDENT  
(Title)

7-30-01  
(Date Received)

4-10-01  
(Date)

**SCHEDULE A**

**PRICE PER MESSAGE FORWARDED FOR BILLING AND COLLECTION  
FOR A RATED AND FORMATTED BILLING FILE, TAPE, OR DISKETTE (See NOTE below)**

Per Month Charges

<u>Messages</u>	<u>Per Month Charges</u>
0 – 500,000	[REDACTED] Message
500,001 – 1,000,000	[REDACTED] Per Message
1,000,001 – 2,000,000	[REDACTED] Per Message
2,000,001 – 5,000,000	[REDACTED] Per Message
5,000,001 – 10,000,000	[REDACTED] Per Message
10,000,000 and Over	[REDACTED] Per Message

NOTE: Excludes LEC Billing Pass-Throughs and is subject to a minimum charge of [REDACTED] per month.

- a. LEC billing will be at ILD's current LEC cost per message for particular LEC.
- b. Unbillable calls rejected by the LECs that provide detail will be charged back to Customer.
- c. Unbillable calls rejected by the LECs that do not provide detail will be shared prorata.
- d. Specifically identified adjustments for uncollectible calls will be charged back to Customer.
- e. Bulk adjustments for uncollectible calls will be shared prorata.
- f. Express mailings will be charged to Customer at the rate the Express Service Company uses to charge ILD. ILD will use the company of its choice for express mailings.
- g. Special programming requests will be at the rate of \$75 per hour with a three (3) hour minimum.

Inquiry Service Fees:

A) For all LEC's that ILD performs primary inquiry services, the following fees will be charged to Customer:

[REDACTED] per inquiry call handled by ILD customer service representatives

Any corresponding reduction in ILD's LEC billing cost per message as a result of ILD performing primary inquiry services will be entirely passed-through to Customer.

B) For all LECs that ILD performs secondary inquiry services, the following fees will be charged to Customer:

[REDACTED] per inquiry call handled by ILD customer services representatives

C) For all customer service inquiry calls that ILD transfers to Customer, the following fees will be charged to Customer:

[REDACTED] per transferred call

## ILD Telecommunications, Inc. 1+ Billing and Collections Agreement

This Agreement is made this 5 day of MARCH, 2004 by and between Mico Comm. Inc. ("Customer"), a Alabama corporation, with its principal office at:  
Lechase Corporate Dr. #490  
Birmingham, AL 35294

and ILD Telecommunications, Inc. ("ILD"), a Delaware corporation with its principal office located at:

16200 Addison Road, Suite 100  
Addison, Texas 75001

### ARTICLE 1: SERVICES TO BE PROVIDED

1.1 ILD shall provide billing and collection services for call records supplied by Customer. Customer's messages shall be provided in a format reasonably acceptable to ILD and will be subject to the limitations described in Article 4 of this Agreement. ILD reserves the right to refuse billing if in its sole discretion it considers the message type to be of an objectionable nature, considers the rates to be in excess of normal industry standards or considers such billing to be in violation of the terms and conditions of its contracts with the Local Exchange Carriers (LECs).

1.2 Charges for billing and collection services shall be as specified in Schedule A attached hereto. As indicated in Schedule A, billing and collection charges to ILD by the Local Exchange Carriers (LECs) are passed through as additional charges which vary by LEC and which are subject to change without notice from the LEC. These pass-through charges include but are not limited to the following:

- a. LEC per message bill rendered and per message charges.
- b. Specific unbillable Customer calls (e.g. vacant number or coin).
- c. Prorata portion of unbillable calls from those LECs that do not provide unbillable call detail. This prorata amount will be calculated from the proportion which the total dollar amount of Customer calls bears to the total of all calls billed through ILD for the period involved. Such calculations may be by LEC or Revenue Accounting Office (RAO) within the LEC.
- d. Bad debt allowance holdbacks. Initial holdbacks will be set at eight percent (8.00%) for those LECs that utilize holdbacks. Once sufficient uncollectible data is supplied to ILD by each LEC (timeframes vary on a LEC by LEC basis), Customer's holdbacks will be set on a LEC by LEC basis to be determined by Customer's actual uncollectible bad debt experience. LEC uncollectible bad debt true-ups will be passed through to Customer in accordance with each LEC's true-up policies and procedures.
- e. Specific identifiable adjustments due to ILD or the LEC determining the message(s) to be uncollectible.
- f. Prorata portion of adjustments for uncollectible calls that cannot be identified to a specific customer.
- g. Programming and development fees for regulatory requirements such as sub-carrier billing identification.

### ARTICLE 2: SECURITY

Customer hereby grants ILD a continuing security interest in and a right of offset against all accounts receivable of Customer which arise in connection with any message billed by ILD. This security interest and right of offset is intended to secure all Customer's obligations and liabilities to ILD under this Agreement or otherwise. ILD reserves the right to deduct the proceeds of any product offering to which Customer subscribes to secure the debt on any other product. Notwithstanding the foregoing, if Customer elects to participate in ILD's Advanced Payment Agreement, then the submission of call records by Customer shall constitute a sale and transfer by Customer to ILD of such call records, free and clear of any liens or encumbrances, subject to the terms and conditions of the Advanced Payment Agreement.

### ARTICLE 3: SETTLEMENT

Billing documents will be prepared by ILD for each message tape received from Customer. Settlement will occur sixty (60) days from the end of the billing month (i.e. tapes submitted for April billing will be settled on June 30). Any and all charges due ILD by Customer for the settlement month will be deducted from the settlement. The settlement document will provide the following information:

- a. The total number of Customer messages forwarded for billing and the charges therefore in accordance with Schedule A attached.
- b. The gross dollar amount of all messages billed by ILD for Customer.
- c. The total number of end user inquiries handled by ILD's customer service department and the charges therefor in accordance with Schedule A attached hereto and made a part hereof.
- d. Summary of charges for the LEC pass-throughs related to the messages billed under Item B above. These pass-throughs will include those enumerated in Article 1.2 and Schedule A and any other charges assessed by the LEC relating to the messages.
- e. True-ups reflecting changes in the actual charges, uncollectible reserves, etc. of the associated LECs.
- f. Chargebacks for calls returned by the LEC's or refunded by ILD.
- g. Network fees.
- h. Miscellaneous charges such as express delivery fees, wire transfer fees, or any other charges applicable to Customer for the settlement month.

In the event that Customer cancels this Agreement or there is insufficient billing previously submitted to cover anticipated future LEC adjustments and bad debt, ILD reserves the right to withhold a portion or all of Customer's settlement until such time as it feels is necessary for the LECs to process all aforementioned adjustments and bad debt. In the event that there are insufficient funds held to cover these expenses, an invoice showing the amount due ILD will be sent to Customer; Customer agrees to pay this invoice immediately upon receipt.

### ARTICLE 4: LIMITATIONS

Customer hereby acknowledges that ILD is limited to providing intra-state billing and collection services in those states where Customer has a Certificate of Authority or a certificate or tariff is not required. Customer must provide proof of necessary certifications and/or tariffs for each applicable state. Customer represents and warrants that all messages submitted to ILD for billing and collection under the terms of this Agreement will have been validated through an industry recognized LIDB validation service provider. Additionally, Customer agrees to show ILD proof of an active Line Information Database ("LIDB") validation agreement upon request. Furthermore, Customer acknowledges its understanding that ILD is also limited to provide billing and collection services in those areas where it has agreements with the LECs. Upon request, ILD will provide Customer with its on net/off net file on a monthly basis at no additional charge to Customer. It is understood by Customer that each LEC has certain restrictions as to the age of any message that may be outcleared through its Billing and Collection Agreement. Any message sent to ILD for outclearing that exceeds this age limit will be rejected by ILD and returned to Customer. ILD will provide a list of message age limits by LEC upon request of Customer.

### ARTICLE 5: WARRANTY AND LIMITATION OF LIABILITY

THE WARRANTIES AND REMEDIES SET FORTH HEREIN CONSTITUTE THE ONLY WARRANTIES AND REMEDIES WITH RESPECT TO THE SERVICES AND FACILITIES PROVIDED BY ILD OR ANY BREACH BY ILD HEREUNDER. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE. IN NO EVENT SHALL ILD BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUES, REGARDLESS OF THE FORESEEABILITY THEREOF, OCCASIONED BY ILD'S PERFORMANCE OF, OR FAILURE TO PERFORM, ITS OBLIGATIONS HEREUNDER.

**ARTICLE 6: CONFIDENTIALITY**

The parties to this Agreement shall treat this Agreement, its notices and Exhibits and their terms and conditions, as strictly confidential. Neither party shall disclose any of this information or any of these materials to any person who is not a party to or of this Agreement. The parties acknowledge that, in the event of an unauthorized disclosure, the damages suffered by the non-disclosing party may be difficult if not impossible to ascertain, and that such non-disclosing party may seek injunctive relief as well as monetary damages against the breaching party.

**ARTICLE 7: TERMINATION**

Either party may cancel this Agreement upon ninety (90) days written notice prior to any scheduled renewal date as defined in Article 21 of this Agreement. ILD reserves the right to cancel this Agreement immediately upon notification by any LEC of unusually large uncollectibles, unbillables or adjustments. If Customer cancels this Agreement with ILD, funds for the final settlement will be held as outlined in Article 3.

**ARTICLE 8: REPRESENTATION AND WARRANTIES**

By signing this Agreement, Customer attests to the fact that the billings presented to ILD for outclearing are not subject to any offset, lien, dispute or counterclaim.

**ARTICLE 9: FINANCIAL STATEMENTS**

Upon the request of ILD, Customer shall furnish quarterly financial statements or equivalent financial information. This information shall be compiled in compliance with GAAP (Generally Accepted Accounting Principles) by an independent accounting or auditing firm.

**ARTICLE 10: ASSIGNMENT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Customer shall not assign, sublet, delegate, or transfer any of its rights or obligations hereunder without the prior written consent of ILD, which consent shall not be unreasonably withheld or delayed. For purposes hereof, the following shall also constitute an assignment: (a) any merger, consolidation or reorganization to which Customer is a party, (b) the sale or transfer of all or substantially all the assets of Customer, (c) the sale, issuance or transfer of any voting securities of Customer which result in a change of control of Customer.

**ARTICLE 11: SEVERABILITY**

In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall be unimpaired, and shall remain in effect and be binding upon the parties.

**ARTICLE 12: WAIVER**

The delay or failure of ILD to enforce or insist upon compliance with any of the terms or conditions of this Agreement or to exercise any remedy provided herein, the waiver of any term or condition of this Agreement, or the granting of an extension of time for performance, shall not constitute the permanent waiver of any term, condition or remedy of or under this Agreement, and this Agreement and each of its provisions shall remain at all times in full force and effect until modified as provided herein.

**ARTICLE 13: FORCE MAJEURE**

Notwithstanding anything to the contrary herein, ILD shall not be liable to Customer or any other person or entity for loss or damage or deemed to be in breach of this Agreement due to ILD's failure of performance, wholly or in part, under this Agreement if such non-performance is due to causes beyond ILD's reasonable control, including without limitation; acts of God, fire, explosion, vandalism, storm or other natural occurrences; any law, order, regulation, direction, action or request of the United States government (including without limitation, state and local governments having jurisdiction over any of the parties) or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more of such governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; strikes, lockouts, work stoppages or other such labor difficulties; or any act or omission of any other person or entity. Any delay resulting therefrom shall extend performance accordingly or excuse performance by ILD, in whole or in part.

**ARTICLE 14: INDEMNIFICATION**

Customer shall defend, indemnify and hold harmless ILD, its affiliates, their respective officers, directors, shareholders, employees, agents, successors and assigns, and each of them, from and against, any and all damages, losses, claims, liabilities, demands, charges, suits, penalties, costs or expenses, whether accrued, absolute, contingent or otherwise, including but not limited to court costs and attorneys' fees, which any of the foregoing may incur or to which any of the foregoing may be subjected, arising out of or otherwise based upon any of the following:

- a. Any breach or default by either party of or under any of the provisions of this Agreement or of any other agreement or instrument to which either party or an affiliate of either party is a party or which is in favor of either party or an affiliate of either party (for purposes hereof, an "affiliate" of either party shall include any person or entity controlling, controlled by or under common control with either party),
- b. Claims of any third party or entity for libel, slander, infringement of copyright, or unauthorized use of trademark, trade name, or service mark arising out of material, data, information, or other content transmitted by Customer over ILD's network, or
- c. Claims of any third party or entity for damages, losses, or injuries arising out of any act or omission of Customer or its agents, servants, employees, contractors, or representatives.

**ARTICLE 15: SURVIVAL**

The covenants and agreements of Customer contained in this Agreement with respect to payment of amounts due and indemnification shall survive any termination of this Agreement.

**ARTICLE 16: UNLAWFUL PURPOSE**

The services provided by ILD are subject to the condition that they will not be used for any unlawful purposes.

**ARTICLE 17: MODIFICATIONS IN WRITING**

Except as otherwise provided herein, no subsequent Agreement between ILD and Customer shall be effective or binding unless it is made in writing and signed by both parties.

**ARTICLE 18: SUIT FOR ENFORCEMENT**

In the event suit is brought or an attorney is retained by ILD to enforce the terms of this Agreement or to collect any money as due hereunder or to collect any money damages for breach thereof, ILD shall be entitled to recover, in addition to any other remedy, the reimbursement for reasonable attorneys fees, court costs, cost of investigations and other related expenses incurred in connection therewith.



#### ARTICLE 19: CONSTRUCTION

This Agreement shall be governed by and construed under the laws of the state of Texas. This Agreement shall be binding upon Customer, its successors and assigns.

#### ARTICLE 20: NOTICES

All notices which the parties are required or may desire to serve on each other under or in connection with this Agreement shall be served in writing by registered or certified mail, postage prepaid or prepaid telegram or telex or personal service, addressed as follows:

If to ILD:

ILD Telecommunications, Inc.  
5213 NW 33<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33309  
Attn: Kathy McQuade, Director - Billing Services

If to Customer:

Miko Communications Inc  
1 Chase Corporate Dr #490  
Birmingham AL 35244  
Attn: Margaret Currie, President

Notice sent by mail shall become effective on the fourth business day after mailing. Notice sent via overnight service, using a nationally recognized courier service (which shall include Federal Express, Airborne Express and United Parcel Service), shall become effective on the day after sending. Notice delivered personally shall become effective on receipt.

#### ARTICLE 21: TERM

The initial term of this Agreement shall commence on the date of Customer's first billing message submittal to ILD and shall continue in full force and effect for a period of twelve (12) months. This Agreement shall be automatically extended for successive one year periods thereafter unless canceled by either party with ninety (90) days written notice pursuant to Article 7 of this Agreement.

#### ARTICLE 22: TAXES

Customer grants ILD full authority on its behalf to authorize the LECs to apply taxes associated with billing and collections services in the same manner in which they apply these taxes to their own end users.

ILD, based solely on the information provided by the LECs will file and remit applicable taxes to the appropriate taxing authority. Customer agrees that ILD is acting only as Customer's agent with respect to the billing and collection of taxes. ILD will have no liability whatsoever to Customer for incorrect information supplied by the LECs. Customer will indemnify and hold ILD harmless from and against any and all claims, actions, damages, liabilities, costs and expenses, including without limitation reasonable attorneys' fees and expenses, that are asserted against or incurred by ILD as a result of or in connection with any of these said tax items.

Customer will be solely responsible for calculating, and advising ILD with respect to, any Foreign Intrastate Taxes and any other taxes that are not calculated by the LEC.

#### ARTICLE 23: INQUIRY SERVICE

Customer acknowledges that the telephone number printed on the end user bill page as the first point of inquiry will be that of ILD. Customer and ILD recognize and acknowledge that some LECs demand that the LEC itself perform the customer inquiry function. In these cases, the charges associated with the LEC inquiry services will be passed through at ILD's cost to Customer. Calls that the LEC cannot handle such as rate disputes will be referred to ILD's Customer Service Department for handling. Customer grants ILD or its agent full authority to make adjustments or

to authorize the LECs to make adjustments on calls when ILD deems it warranted. ILD will provide any end user with Customer's name, address and telephone number upon demand. Charges for inquiry services provided by ILD shall be as specified in Schedule A attached hereto and made a part hereof. Customer agrees to provide ILD with a list of its current rate schedules and certifications prior to ILD releasing billing on Customer's behalf to enable ILD to perform proper customer service functions. Upon request by ILD, Customer further agrees to provide the location information of any telephone number designated as origination numbers on Customer's billing files/tapes/diskettes.

ILD will make every effort to refer all inquiry calls to Customer. However, Customer realizes and acknowledges that ILD may handle some of Customer's inquiry due to certain circumstances, including but not limited to, 1) an outage in Customer's operator center, or 2) an end user refusing to deal with Customer and demanding that ILD handle the inquiry, or 3) high volumes in Customer's operator center resulting in long hold times for end user inquiry calls, or 4) a LEC demanding that ILD resolve an end user billing issue. In these circumstances, Customer grants ILD or its agent full authority to make adjustments or to authorize the LECs to make adjustments on calls when ILD deems it warranted.

If at any time ILD, in its sole discretion, determines that Customer is not providing sufficient end user inquiry customer service, ILD reserves the right to handle all prospective customer end user inquiries until such time that Customer and ILD can mutually agree upon the terms under which Customer may resume providing such service. In the event of ILD "taking back" inquiry services from Customer, Customer shall be notified in writing immediately. The charges for ILD handling inquiry services shall be as outlined in Schedule A on a per inquiry call handled by ILD customer service representative basis.

#### ARTICLE 24: CHANGES IN PRICING

The pricing set forth in the schedules attached hereto is subject to change upon thirty (30) days' written notice from ILD.

#### ARTICLE 25: MISCELLANEOUS PROVISIONS

- a. Time is of the essence. Time is of the essence in this Agreement.
- b. Previously/Concurrently billed messages. By submitting billing to ILD, Customer represents that none of said messages have been previously billed to the end user in any form or format.
- c. Special Requests. Special requests by Customer such as unique reports or any other requests not provided in the normal course of business will be reviewed in good faith by ILD. ILD agrees to obtain prior written approval from Customer with respect to any charges over and above the normal billing and collection charges outlined in this Agreement. Customer understands and agrees that any such charges will be deducted from the settlement for the month in which said charges are incurred.



Date: April 21, 2004

**SCHEDULE A**

**PRICE PER MESSAGE FORWARDED FOR BILLING AND COLLECTION  
FOR A RATED AND FORMATTED BILLING FILE, TAPE, OR DISKETTE (See NOTE below)**

Per Month Charges

<u>Messages</u>	<u>Per Month Charges</u>
0 - 500,000	[REDACTED] Per Message
500,001 - 1,000,000	[REDACTED] Per Message
1,000,001 - 2,000,000	[REDACTED] Per Message
2,000,001 - 5,000,000	[REDACTED] Per Message
5,000,001 - 10,000,000	[REDACTED] Per Message
10,000,000 and Over	[REDACTED] Per Message

NOTE: Excludes LEC Billing Pass-Throughs and is subject to a minimum charge of [REDACTED] per month.

- a. LEC billing will be at ILD's current LEC cost per message for particular LEC.
- b. Unbillable calls rejected by the LECs that provide detail will be charged back to Customer.
- c. Unbillable calls rejected by the LECs that do not provide detail will be shared prorata.
- d. Specifically identified adjustments for uncollectible calls will be charged back to Customer.
- e. Bulk adjustments for uncollectible calls will be shared prorata.
- f. Express mailings will be charged to Customer at the rate the Express Service Company uses to charge ILD. ILD will use the company of its choice for express mailings.
- g. Special programming requests will be at the rate of \$75 per hour with a three (3) hour minimum.

Inquiry Service Fees:

A) For all LEC's that ILD performs primary inquiry services, the following fees will be charged to Customer:

[REDACTED] per inquiry call handled by ILD customer service representatives

Any corresponding reduction in ILD's LEC billing cost per message as a result of ILD performing primary inquiry services will be entirely passed-through to Customer.

B) For all LECs that ILD performs secondary inquiry services, the following fees will be charged to Customer:

[REDACTED] per inquiry call handled by ILD customer services representatives

C) For all customer service inquiry calls that ILD transfers to Customer, the following fees will be charged to Customer:

[REDACTED] per transferred call

Date: April 21, 2004

Standard B&C Agreement

Page 1 of 7

## ILD Telecommunications, Inc. 1+ Billing and Collections Agreement

This Agreement is made this 19 day of May, 2000 by and between UKI Communications, Inc. ("Customer"), a Nevada corporation, with its principal office at:

500 N. Rainbow Blvd # 300  
Las Vegas, NV 89107

and ILD Telecommunications, Inc. ("ILD"), a Delaware corporation with its principal office located at:

16200 Addison Road, Suite 100  
Addison, Texas 75001

### ARTICLE 1: SERVICES TO BE PROVIDED

1.1 ILD shall provide billing and collection services for call records supplied by Customer. Customer's messages shall be provided in a format reasonably acceptable to ILD and will be subject to the limitations described in Article 4 of this Agreement. ILD reserves the right to refuse billing if in its sole discretion it considers the message type to be of an objectionable nature, considers the rates to be in excess of normal industry standards or considers such billing to be in violation of the terms and conditions of its contracts with the Local Exchange Carriers (LECs).

1.2 Charges for billing and collection services shall be as specified in Schedule A attached hereto. As indicated in Schedule A, billing and collection charges to ILD by the Local Exchange Carriers (LECs) are passed through as additional charges which vary by LEC and which are subject to change without notice from the LEC. These pass-through charges include but are not limited to the following:

- a. LEC per message bill rendered and per message charges.
- b. Specific unbillable Customer calls (e.g. vacant number or coin).
- c. Prorata portion of unbillable calls from those LECs that do not provide unbillable call detail. This prorata amount will be calculated from the proportion which the total dollar amount of Customer calls bears to the total of all calls billed through ILD for the period involved. Such calculations may be by LEC or Revenue Accounting Office (RAO) within the LEC.
- d. Bad debt allowance holdbacks. Initial holdbacks will be set at eight percent (8.00%) for those LECs that utilize holdbacks. Once sufficient uncollectible data is supplied to ILD by each LEC (timeframes vary on a LEC by LEC basis), Customer's holdbacks will be set on a LEC by LEC basis to be determined by Customer's actual uncollectible bad debt experience. LEC uncollectible bad debt true-ups will be passed through to Customer in accordance with each LEC's true-up policies and procedures.
- e. Specific identifiable adjustments due to ILD or the LEC determining the message(s) to be uncollectible.
- f. Prorata portion of adjustments for uncollectible calls that cannot be identified to a specific customer.
- g. Programming and development fees for regulatory requirements such as sub-carrier billing identification.

### ARTICLE 2: SECURITY

Customer hereby grants ILD a continuing security interest in and a right of offset against all accounts receivable of Customer which arise in connection with any message billed by ILD. This security interest and right of offset is intended to secure all Customer's obligations and liabilities to ILD under this Agreement or otherwise. ILD reserves the right to deduct the proceeds of any product offering to which Customer subscribes to secure the debt on any other product. Notwithstanding the foregoing, if Customer elects to participate in ILD's Advanced Payment Agreement, then the submission of call records by Customer shall constitute a sale and transfer by Customer to ILD of such call records, free and clear of any liens or encumbrances, subject to the terms and conditions of the Advanced Payment Agreement.

Date: April 21, 2004

Standard B&amp;C Agreement

Page 2 of 7

### ARTICLE 3: SETTLEMENT

Billing documents will be prepared by ILD for each message tape received from Customer. Settlement will occur sixty (60) days from the end of the billing month (i.e. tapes submitted for April billing will be settled on June 30). Any and all charges due ILD by Customer for the settlement month will be deducted from the settlement. The settlement document will provide the following information:

- a. The total number of Customer messages forwarded for billing and the charges therefore in accordance with Schedule A attached.
- b. The gross dollar amount of all messages billed by ILD for Customer.
- c. The total number of end user inquiries handled by ILD's customer service department and the charges therefor in accordance with Schedule A attached hereto and made a part hereof.
- d. Summary of charges for the LEC pass-throughs related to the messages billed under Item B above. These pass-throughs will include those enumerated in Article 1.2 and Schedule A and any other charges assessed by the LEC relating to the messages.
- e. True-ups reflecting changes in the actual charges, uncollectible reserves, etc. of the associated LECs.
- f. Chargebacks for calls returned by the LEC's or refunded by ILD.
- g. Network fees.
- h. Miscellaneous charges such as express delivery fees, wire transfer fees, or any other charges applicable to Customer for the settlement month.

In the event that Customer cancels this Agreement or there is insufficient billing previously submitted to cover anticipated future LEC adjustments and bad debt, ILD reserves the right to withhold a portion or all of Customer's settlement until such time as it feels is necessary for the LECs to process all aforementioned adjustments and bad debt. In the event that there are insufficient funds held to cover these expenses, an invoice showing the amount due ILD will be sent to Customer; Customer agrees to pay this invoice immediately upon receipt.

### ARTICLE 4: LIMITATIONS

Customer hereby acknowledges that ILD is limited to providing intra-state billing and collection services in those states where Customer has a Certificate of Authority or a certificate or tariff is not required. Customer must provide proof of necessary certifications and/or tariffs for each applicable state. Customer represents and warrants that all messages submitted to ILD for billing and collection under the terms of this Agreement will have been validated through an industry recognized LIDB validation service provider. Additionally, Customer agrees to show ILD proof of an active Line Information Database ("LIDB") validation agreement upon request. Furthermore, Customer acknowledges its understanding that ILD is also limited to provide billing and collection services in those areas where it has agreements with the LECs. Upon request, ILD will provide Customer with its on net/off net file on a monthly basis at no additional charge to Customer. It is understood by Customer that each LEC has certain restrictions as to the age of any message that may be outcleared through its Billing and Collection Agreement. Any message sent to ILD for outclearing that exceeds this age limit will be rejected by ILD and returned to Customer. ILD will provide a list of message age limits by LEC upon request of Customer.

### ARTICLE 5: WARRANTY AND LIMITATION OF LIABILITY

THE WARRANTIES AND REMEDIES SET FORTH HEREIN CONSTITUTE THE ONLY WARRANTIES AND REMEDIES WITH RESPECT TO THE SERVICES AND FACILITIES PROVIDED BY ILD OR ANY BREACH BY ILD HEREUNDER. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE. IN NO EVENT SHALL ILD BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUES, REGARDLESS OF THE FORESEEABILITY THEREOF, OCCASIONED BY ILD'S PERFORMANCE

OF, OR FAILURE TO PERFORM, ITS OBLIGATIONS HEREUNDER.

**ARTICLE 6: CONFIDENTIALITY**

The parties to this Agreement shall treat this Agreement, its notices and Exhibits and their terms and conditions, as strictly confidential. Neither party shall disclose any of this information or any of these materials to any person who is not a party to or of this Agreement. The parties acknowledge that, in the event of an unauthorized disclosure, the damages suffered by the non-disclosing party may be difficult if not impossible to ascertain, and that such non-disclosing party may seek injunctive relief as well as monetary damages against the breaching party.

**ARTICLE 7: TERMINATION**

Either party may cancel this Agreement upon ninety (90) days written notice prior to any scheduled renewal date as defined in Article 21 of this Agreement. ILD reserves the right to cancel this Agreement immediately upon notification by any LEC of unusually large uncollectibles, unbillables or adjustments. If Customer cancels this Agreement with ILD, funds for the final settlement will be held as outlined in Article 3.

**ARTICLE 8: REPRESENTATION AND WARRANTIES**

By signing this Agreement, Customer attests to the fact that the billings presented to ILD for outclearing are not subject to any offset, lien, dispute or counterclaim.

**ARTICLE 9: FINANCIAL STATEMENTS**

Upon the request of ILD, Customer shall furnish quarterly financial statements or equivalent financial information. This information shall be compiled in compliance with GAAP (Generally Accepted Accounting Principles) by an independent accounting or auditing firm.

**ARTICLE 10: ASSIGNMENT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Customer shall not assign, sublet, delegate, or transfer any of its rights or obligations hereunder without the prior written consent of ILD, which consent shall not be unreasonably withheld or delayed. For purposes hereof, the following shall also constitute an assignment: (a) any merger, consolidation or reorganization to which Customer is a party, (b) the sale or transfer of all or substantially all the assets of Customer, (c) the sale, issuance or transfer of any voting securities of Customer which result in a change of control of Customer.

**ARTICLE 11: SEVERABILITY**

In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall be unimpaired, and shall remain in effect and be binding upon the parties.

**ARTICLE 12: WAIVER**

The delay or failure of ILD to enforce or insist upon compliance with any of the terms or conditions of this Agreement or to exercise any remedy provided herein, the waiver of any term or condition of this Agreement, or the granting of an extension of time for performance, shall not constitute the permanent waiver of any term, condition or remedy of or under this Agreement, and this Agreement and each of its provisions shall remain at all times in full force and effect until modified as provided herein.

**ARTICLE 13: FORCE MAJEURE**

Notwithstanding anything to the contrary herein, ILD shall not be liable to Customer or any other person or entity for loss or damage or deemed to be in breach of this Agreement due to ILD's failure of performance, wholly or in part, under this Agreement if such non-performance is due to causes beyond ILD's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, storm or other natural occurrences; any law, order, regulation, restriction, action or request of the United States government (including without limitation, state and local governments having jurisdiction over any of the parties) or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more of such governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; strikes, lockouts, work stoppages or other such labor difficulties; or any act or omission of any other person or entity. Any delay resulting therefrom shall extend performance accordingly or excuse performance by ILD, in whole or in part.

**ARTICLE 14: INDEMNIFICATION**

Customer shall defend, indemnify and hold harmless ILD, its affiliates, their respective officers, directors, shareholders, employees, agents, successors and assigns, and each of them, from and against, any and all damages, losses, claims, liabilities, demands, charges, suits, penalties, costs or expenses, whether accrued, absolute, contingent or otherwise, including but not limited to court costs and attorneys' fees, which any of the foregoing may incur or to which any of the foregoing may be subjected, arising out of or otherwise based upon any of the following:

Any breach or default by either party of or under any of the provisions of this Agreement or of any other agreement or instrument to which either party or an affiliate of either party is a party or which is in favor of either party or an affiliate of either party (for purposes hereof, an "affiliate" of either party shall include any person or entity controlling, controlled by or under common control with either party),

Claims of any third party or entity for libel, slander, infringement of copyright, or unauthorized use of trademark, trade name, or service mark arising out of material, data, information, or other content transmitted by Customer over ILD's network, or

Claims of any third party or entity for damages, losses, or injuries arising out of any act or omission of Customer or its agents, servants, employees, contractors, or representatives.

**ARTICLE 15: SURVIVAL**

The covenants and agreements of Customer contained in this Agreement with respect to payment of amounts due and indemnification shall survive any termination of this Agreement.

**ARTICLE 16: UNLAWFUL PURPOSE**

The services provided by ILD are subject to the condition that they will not be used for any unlawful purposes.

**ARTICLE 17: MODIFICATIONS IN WRITING**

Except as otherwise provided herein, no subsequent Agreement between ILD and Customer shall be effective or binding unless it is made in writing and signed by both parties.

**ARTICLE 18: SUIT FOR ENFORCEMENT**

In the event suit is brought or an attorney is retained by ILD to enforce the terms of this Agreement or to collect any money as due hereunder or to collect any money damages for breach thereof, ILD shall be entitled to recover, in addition to any other remedy, the reimbursement for reasonable attorneys fees, court costs, cost of investigations and other related expenses incurred in connection therewith.



**ARTICLE 19: CONSTRUCTION**

This Agreement shall be governed by and construed under the laws of the state of Texas. This Agreement shall be binding upon Customer, its successors and assigns.

**ARTICLE 20: NOTICES**

All notices which the parties are required or may desire to serve on each other under or in connection with this Agreement shall be served in writing by registered or certified mail, postage prepaid or prepaid telegram or telex or personal service, addressed as follows:

If to ILD:

If to Customer:

ILD Telecommunications, Inc.  
5213 NW 33<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33309  
Attn: Kathy McQuade, Director - Billing Services

UKI Communications, Inc.  
500 N Rainbow Blvd Ste 300  
Las Vegas, NV 89107  
Attn: Karyn Bartel

Notice sent by mail shall become effective on the fourth business day after mailing. Notice sent via overnight service, using a nationally recognized courier service (which shall include Federal Express, Airborne Express and United Parcel Service), shall become effective on the day after sending. Notice delivered personally shall become effective on receipt.

**ARTICLE 21: TERM**

The initial term of this Agreement shall commence on the date of Customer's first billing message submittal to ILD and shall continue in full force and effect for a period of twelve (12) months. This Agreement shall be automatically extended for successive one year periods thereafter unless canceled by either party with ninety (90) days written notice pursuant to Article 7 of this Agreement.

**ARTICLE 22: TAXES**

Customer grants ILD full authority on its behalf to authorize the LECs to apply taxes associated with billing and collections services in the same manner in which they apply these taxes to their own end users.

ILD, based solely on the information provided by the LECs will file and remit applicable taxes to the appropriate taxing authority. Customer agrees that ILD is acting only as Customer's agent with respect to the billing and collection of taxes. ILD will have no liability whatsoever to Customer for incorrect information supplied by the LECs. Customer will indemnify and hold ILD harmless from and against any and all claims, actions, damages, liabilities, costs and expenses, including without limitation reasonable attorneys' fees and expenses, that are asserted against or incurred by ILD as a result of or in connection with any of these said tax items.

Customer will be solely responsible for calculating, and advising ILD with respect to, any Foreign Intrastate Taxes and any other taxes that are not calculated by the LEC.

**ARTICLE 23: INQUIRY SERVICE**

Customer acknowledges that the telephone number printed on the end user bill page as the first point of inquiry will be that of the local LEC or a third party chosen by ILD to handle this service. Calls that the LEC or third party agency cannot handle such as rate disputes will be referred to ILD's Customer Service Department for handling. Customer grants ILD or its agent full authority to make adjustments or to authorize the LECs to make adjustments

Date: April 21, 2004

Standard B&C Agreement  
Page 6 of 7

calls when ILD deems it warranted. ILD will provide any end user with Customer's name, address and telephone number upon demand. ILD reserves the right to change the primary point of inquiry from any or all LEC(s) to "in-house" if in its sole discretion it is deemed appropriate. Charges for inquiry services provided by ILD shall be as specified in Schedule A attached hereto and made a part hereof. Customer agrees to provide ILD with a list of its current rate schedules and certifications prior to ILD releasing billing on Customer's behalf to enable ILD to perform proper customer service functions. Upon request by ILD, Customer further agrees to provide the location information of any telephone number designated as origination numbers on Customer's billing files/tapes/diskettes.

**ARTICLE 24: CHANGES IN PRICING**

The pricing set forth in the schedules attached hereto is subject to change upon thirty (30) days' written notice from ILD.

**ARTICLE 25: MISCELLANEOUS PROVISIONS**

- 1. Time is of the essence. Time is of the essence in this Agreement.
- 2. Previously/Concurrently billed messages. By submitting billing to ILD, Customer represents that none of said messages have been previously billed to the end user in any form or format.
- 3. Special Requests. Special requests by Customer such as unique reports or any other requests not provided in the normal course of business will be reviewed in good faith by ILD. ILD agrees to obtain prior written approval from Customer with respect to any charges over and above the normal billing and collection charges outlined in this Agreement. Customer understands and agrees that any such charges will be deducted from the settlement for the month in which said charges are incurred.

IN WITNESS WHEREOF, Customer and ILD have executed this Agreement as of the day and year shown below.

ILD TELECOMMUNICATIONS, INC.

CUSTOMER

By: Kathy McQuinn  
for Daniel W. Kahrs  
Vice President, Operations

By: Giuseppe N. Vitale  
(Signature)

Giuseppe Vitale  
(Print Name)

President  
(Title)

5-22-00  
(Date Received)

5-19-00  
(Date)

**SCHEDULE A**

**PRICE PER MESSAGE FORWARDED FOR BILLING AND COLLECTION  
FOR A RATED AND FORMATTED BILLING FILE, TAPE, OR DISKETTE (See NOTE below)**

Per Month Charges

<u>Messages</u>	<u>Per Month Charges</u>
0 – 500,000	[REDACTED] Per Message
500,001 – 1,000,000	[REDACTED] Per Message
1,000,001 – 2,000,000	[REDACTED] Per Message
2,000,001 – 5,000,000	[REDACTED] Per Message
5,000,001 – 10,000,000	[REDACTED] Per Message
10,000,000 and Over	[REDACTED] Per Message

NOTE: Excludes LEC Billing Pass-Throughs and is subject to a minimum charge of [REDACTED] per month.

- a. LEC billing will be at ILD's current LEC cost per message for particular LEC.
- b. Unbillable calls rejected by the LECs that provide detail will be charged back to Customer.
- c. Unbillable calls rejected by the LECs that do not provide detail will be shared prorata.
- d. Specifically identified adjustments for uncollectible calls will be charged back to Customer.
- e. Bulk adjustments for uncollectible calls will be shared prorata.
- f. Express mailings will be charged to Customer at the rate the Express Service Company uses to charge ILD. ILD will use the company of its choice for express mailings.
- g. Special programming requests will be at the rate of \$75 per hour with a three (3) hour minimum.

Inquiry Service Fees:

A) For all LEC's that ILD performs primary inquiry services, the following fees will be charged to Customer:

[REDACTED] per inquiry call handled by ILD customer service representatives

Any corresponding reduction in ILD's LEC billing cost per message as a result of ILD performing primary inquiry services will be entirely passed-through to Customer.

B) For all LECs that ILD performs secondary inquiry services, the following fees will be charged to Customer:

[REDACTED] per inquiry call handled by ILD customer services representatives

C) For all customer service inquiry calls that ILD transfers to Customer, the following fees will be charged to Customer:

[REDACTED] per transferred call

Nov 29 12 38 PM '99

BEFORE THE  
ARKANSAS PUBLIC SERVICE COMMISSION

FILED

Application of )  
 )  
UKI Communications, Inc. )  
 )  
for Approval to Offer, Render, Furnish, )  
or Supply Telecommunications Services )  
as a Reseller of Services to the Public in )  
the State of Arkansas )

Docket No. 99-3474

To the Arkansas Public Service Commission

APPLICATION OF UKI COMMUNICATIONS, INC.

UKI Communications, Inc. ("UKI" or "Applicant") hereby petitions the Arkansas Public Service Commission ("Commission") for the issuance of a Certificate of Public Convenience and Necessity authorizing it to resell long distance telecommunications services within the State of Arkansas. The following general information and specific exhibits are furnished in support thereof:

**1. Name and Address of the Applicant**

UKI Communications Inc.  
500 N. Rainbow Blvd., Suite 300  
Las Vegas, NV 89107  
(702) 221-1933 Telephone  
(702) 221-1901 Fax

**2. Contact Person**

Giuseppe Vitale is the sole owner, officer and shareholder of UKI Communications, Inc.

He may be reached at the address, phone and fax numbers listed above.

**3. Certificate of Incorporation and Other Corporate Matters**

Applicant was incorporated under the laws of the State of Nevada on August 5, 1999 as UKI Communications, Inc. A copy of its Articles of Incorporation is attached hereto as Exhibit A. A copy of Applicant's Certificate of Authority to transact business in Arkansas is attached hereto as Exhibit B.

**4. The Service to be Offered by Applicant and the Territory to be Served**

Applicant intends to offer resold long distance telecommunications services throughout the entire State of Arkansas. Upon certification, Applicant intends to provide 1+ and calling card services. As a switchless reseller, Applicant has no points of presence in the State of Arkansas, and does not own, lease, or operate any switching, transmission, or other physical facilities in the State of Arkansas, and no such facilities will be used by Applicant in providing long distance services in the State of Arkansas. Rather, Applicant will utilize the facilities of its underlying facilities-based providers in the State of Arkansas.

Applicant is currently authorized to provide interexchange service in Colorado, Iowa, New Jersey, Michigan and Virginia. No such applications have been denied. Applicant's services will be available on a full-time basis to business and residential consumers within the entire State of Arkansas, twenty-four hours per day, seven days per week. Applicant will bill customers via the mechanisms of underlying local exchange carriers, and offers a toll-free customer service number to answer questions regarding billing and services. The customer service number is provided on all bills and statements.

**5. Financial Qualifications**

See Exhibit C.

**6. Technical Qualifications**

See Exhibit D.

**7. Proposed Tariff**

See Exhibit E.

**8. Attorney of Record**

Correspondence concerning this Application should be addressed to Applicant's counsel:

Thomas K. Crowe, Esq.  
Law Offices of Thomas K. Crowe, P.C.  
2300 M Street, N.W., Suite 800  
Washington, D.C. 20037  
(202) 973-2890 Telephone  
(202) 973-2891 Fax

**9. Service Area**

UKI intends to offer its services within and throughout the entire State of Arkansas.

**10. Market**

UKI plans to serve both business and residential customers.

**11. Custodian of Accounting Records**

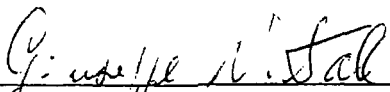
Applicant's custodian for its accounting records and supporting documentation is:

Rodney A. Harrison, C.P.A.  
UKI Communications, Inc.  
500 N. Rainbow Blvd., Suite 300  
Las Vegas, NV 89107  
(702) 221-1933 Telephone  
(702) 221-1901 Fax

Applicant's accounting records and supporting documentation are, and will be, maintained at the above-listed address.

As demonstrated above, UKI respectfully requests that the Commission grant the instant application to operate as a reseller of toll services.

Respectfully submitted,

  
\_\_\_\_\_  
Giuseppe Vitale,  
President  
UKI Communications, Inc.  
500 N Rainbow Blvd., Suite 300  
Las Vegas, NV 89107

Of Counsel:  
Thomas K. Crowe  
LAW OFFICES OF THOMAS  
K. CROWE, P.C.  
Suite 800  
2300 M Street, N.W.  
Washington, D.C. 20037  
(202) 973-2890

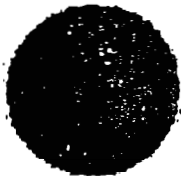
Dated: 11/19/99





EXHIBIT A  
ARTICLES OF INCORPORATION

Date: April 21, 2004



DEAN HELLER  
Secretary of State

101 North Carson Street, Suite 3  
Carson City, Nevada 89701-4786  
(775) 684 5708



FILED # C19313-99

AUG 05 1999

OFFICE OF  
DEAN HELLER  
SECRETARY OF STATE

Important: Read attached instructions before completing form.

1. <u>Name of Corporation:</u>	UKT Communications, Inc.	
2. <u>Resident Agent Name and Street Address:</u> <small>(Must be a Nevada address where process may be served)</small>	Giuseppe Vitale Name 500 N. Rainbow Blvd. # 300 Las Vegas, NEVADA 89107 Street Address City Zip Code	
3. <u>Shares:</u> <small>(No. of shares corporation authorized to issue)</small>	Number of shares with par value: <u>100,000</u> Par value: <u>\$.01</u> Number of shares without par value: _____	
4. <u>Governing Board:</u> <small>(Check one)</small>	Shall be styled as _____ Directors or _____ Trustees	
<u>Names, Addresses, Number of Board of Directors/Trustees:</u>	The First Board of <u>Directors</u> Trustees shall consist of <u>1</u> members whose names and addresses are as follows: Giuseppe Vitale Name 500 N. Rainbow Las Vegas NV 89107 Address City, State, Zip Address City, State, Zip	
5. <u>Purpose:</u> <small>(Optional-See Instructions)</small>	The purpose of this Corporation shall be:	
6. <u>Other Matters:</u> <small>(See Instructions)</small>	Number of additional pages attached: _____	
7. <u>Names, Addresses and Signatures of Incorporators:</u> <small>(Signatures must be notarized) Attach additional pages if there are more than 2 incorporators.</small>	Giuseppe Vitale Name 500 N. Rainbow Las Vegas NV 89107 Address City, State, Zip Address City, State, Zip Giuseppe Vitale Signature Signature	
<u>Notary:</u>	This instrument was acknowledged before me on August 4, 1999 by Caterina Bergeron Name of person As incorporator of Giuseppe Vitale (Name of party on behalf of whom instrument executed) Caterina Bergeron Notary Public Signature (affix notary stamp or seal) This instrument was acknowledged before me on _____ by _____ Name of person As incorporator of _____ (Name of party on behalf of whom instrument executed) _____ Notary Public Signature (affix notary stamp or seal)	
8. <u>Certificate of Acceptance of Appointment of Resident Agent:</u>	I, Giuseppe Vitale, hereby accept appointment as Resident Agent for the above named corporation. Giuseppe Vitale Signature of Resident Agent Date 8/4/99	

This form must be accompanied by appropriate fees. See attached fee schedule.

Nevada Secretary of State Form CORPART1898.01  
Revised on: 02/12/99

# Certificate of Appointment OF NOTARY PUBLIC

GEORGIA, FULTON COUNTY.

I, ELIANITA HICKS, Clerk of the Superior Court in and

for said County, hereby certify that CATERINA BERGERON

whose address is 220 COTTON CT

ALPHARETTA GA 30202-0000

Age 37 Sex FEMALE was duly appointed and sworn to as a Notary Public under the provisions of O.C.G.A. Title 45, Chapter 17, Article 1, as amended, that she began of office.

begin on the 4 day of FEBRUARY 19 02 and expires on the 02

day of FEBRUARY 2003

WITNESS my hand and seal of said Court, this \_\_\_\_\_ day of

FEBRUARY, 19 02

*Elianita Hicks*

Clerk of the Superior Court FULTON County, Georgia.



Signature of Applicant

I, CATERINA BERGERON do solemnly swear that I will well and truly perform the duties of a Notary Public for the State of Georgia to the best of my ability, and I further swear that I am not the holder of any public money belonging to the State and unaccounted for, so help me God.

BOOK PAGE

Sworn to and subscribed before me this \_\_\_\_\_ day of FEBRUARY, 19 \_\_\_\_\_

*[Signature]*  
Deputy Clerk

APPLICATION FOR NOTARY PUBLIC COMMISSION

GEORGIA, FULTON COUNTY

To the Honorable JUANITA HICKS Clerk of Superior Court of said county:

I, Caterina Bergeron in making this application for a Notary Public Commission, do hereby state that (1-a) I reside in this county at the address of 320 Cotton Ct. Alpharetta GA 30202 OR (1-b) I am a resident of a state bordering on the State of Georgia and carry on a business or profession in the State of Georgia in this county or am regularly employed in the State of Georgia in this county at the address of 720 Hembree Place - Roswell, GA

(2) that my home telephone number is (770) 663-4637 (4) that I am 27 years of age. (5) that I am (male/female) Female (6) that I am White (Asian, Black, Hispanic, Indian, White, Other). (7) that my date of birth is 4-8-69 (8) that my Social Security number is [REDACTED]

(9) I am at least eighteen years old and I can read and write the English language.

I, Caterina Bergeron further state that I submit this application to be appointed a notary public pursuant to the provisions of Title 45, Chapter 17, Article 1, as amended, of the Official Code of Georgia Annotated. I list below all denials, revocations, suspensions, restrictions or resignations of any notary commission held by me and list below all my criminal conviction(s), including any plea(s) of nolo contendere, except minor traffic violations:

Description	Date of Action
<u>N/A</u>	<u>N/A</u>

DECLARATION OF APPLICANT

I, Caterina Bergeron do solemnly swear or affirm under penalty of perjury that the personal information I have written in this application is true, complete, and correct.

Caterina Bergeron  
(Signature of Applicant)

STATE OF GEORGIA  
COUNTY OF FULTON

On this 4th day of February, 2004 before me appeared Caterina Bergeron the person who signed the preceding declaration of applicant in my presence and who wrote or affirmed that she understood the document and freely declared it to be truthful.

[Signature]  
Notary Public, Fulton County, Georgia  
My Commission Expires Dec. 12, 2008

(Official Seal of Notary)

GEORGIA FULTON COUNTY

To the Honorable JUANITA HICKS Clerk of Superior Court of said county:

I, SUSAN KAY VITALE, being 48 years of age or older and a resident of  
(Name of Endorser)

FULTON, believe the applicant for Notary Public Commission,  
(Name of County)

CATERINA BERGERON, who is not related to myself, to be a person of  
(Name of Applicant)

integrity, good moral character, and capable of performing notarial acts.

FEB 4 1997  
(Date)

Susan Kay Vitale  
(Signature of Endorser)

575 COUNCIL FIVES CT.  
ALPHARETTA, GA 30202  
(Home Address of Endorser)

I, MARC LEWIS, being 48 years of age or older and a resident of  
(Name of Endorser)

FULTON, believe the applicant for Notary Public Commission,  
(Name of County)

CATERINA BERGERON, who is not related to myself, to be a person of  
(Name of Applicant)

integrity, good moral character, and capable of performing notarial acts.

2/4/97  
(Date)

Marc Lewis  
(Signature of Endorser)

9395 MARTIN RD.  
ROSWELL GA 30076  
(Home Address of Endorser)

Pursuant to O.C.G.A. § 45-17-23, having read and considered, and it appearing that \_\_\_\_\_

\_\_\_\_\_ the applicant, has met the requirements to be appointed a  
notary public, it is hereby ordered that said \_\_\_\_\_ be and is hereby

appointed a notary public for a four-year term beginning \_\_\_\_\_ upon his/her  
taking and subscribing the oath prescribed by law.

JUANITA HICKS

Clerk of the Superior Court FULTON County

(Over)

Mark J. Frost

- Objective:** Continuing employment in the field of software development with a company in which my background, skills and experience can be best utilized to meet or exceed company objectives while aspiring to a position as high as my abilities and opportunity permit.
- Abilities:** Vocational training and aviation principals through the U.S. Navy. Electricity and Electronics courses at Marietta-Cobb Vocational School. Currently working on a Bachelor of Science degree in Computer Science at Kennesaw State College. Completed courses in C/C++ programming offered through ZedNet (Interactive Internet Training). I offer four years experience in aviation electronics and eight years civilian experience in analog and digital circuit repair. As well as five years of Windows programming.
- Experience:**
- 1999-Present** UKI Communications, Inc.  
In charge of maintaining and updating records for customer service.
- 2-97 to 1999** EITech Development, Inc.  
Custom control development. Provide support and maintenance on existing custom controls, which include Compression Plus, FaxPlus, Encrypt-It Plus and Communications Library. Responsible for creating a TAPI interface that will ultimately be used in merging two existing products together. Also, developed an FTP prototype for Dynamic Update which will be releasing later this year. Additionally, I wrote the dialog logic for dynamically creating user defined dialog boxes that are currently used in the self extracting modules of compression Plus v5. Developing in Microsoft C.C++. Support requires knowledge of VB, FoxPro, Delphi, and several other programming languages.
- 6-96 to 1-97** IMS, Inc.  
Worked on a credit control system, to pre-qualify prospective buyers, this project included interfacing with major credit card bureaus, and also allowed credit checking from the World Wide Web. project included heavy MAPI, TAPI and database work. I was also instrumental in finishing the Auto-Match 2000 system, a program designed to aid auto dealers in selling to perspective new and used car buyers.
- 10-95 to 6-96** MicroHelp Inc.  
Worked on the Uninstaller design team designing prototypes for Uninstaller 4.0 in Visual basic, worked exclusively in Spanish, a zip compatible Windows program for end users in Visual Basic. I have written DLLs in Visual C++ 1.52, and Visual C++ version 4.0. In the course of working in Quality assurance I tested MicroHelps custom controls in both Visual Basic and Visual C/C++, reported bugs, and looked for an appropriate work around when engineering fix was going to take long to repair. As a technical support engineer, I provided help to developers using the MicroHelp custom controls, and developed a firmer understanding of the Windows API. I also learned the Microsoft Foundation classes for Visual C++ in the course of employment at MicoHelp
- 4-94 to 10-95** Marietta, Georgia technical Support Manager  
Wrote examples for using the EITech custom controls in Visual Basic and Visual C. These products included FaxPlus and Compression Plus. Provided phone, BBS, and Fax support for the EITech controls. Managed the overall operation and functions of the technical support division.
- 1-88 to 4-94** Shop Manager, Bench Technician  
Repaired and calibrated all types of audiometric testing equipment. Equipment includes audiometers, tympanometers, ABR, ENG equipment. Duties included troubleshooting to component level, calibration and working within ANSI standards, close customer relations. Promoted to shop manager, duties included management of personnel, work scheduling and maintaining parts stock levels. Specialized testing equipment involved using sound meters, docimeters and artificial bone mastoids

**APPLICATION FOR A CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY TO  
OFFER LONG DISTANCE TELECOMMUNICATIONS  
SERVICE BY A RESELLER**

<p>To Be Completed by Chief Clerk</p> <p>DOCKET NO. P- <u>1115</u> , SUB <u>0</u></p> <p>Filing Fee received \$ <u>250.</u></p>
---

**FILED**  
**JUN 28 2001**  
Clerk's Office  
N.C. Utilities Commission

**OFFICIAL COPY**

Note: To apply for a Certificate, Applicant must submit a filing fee of \$250.00 and the typed original and 9 copies of this document to the Commission at the following address:

Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4325

The application must be properly completed and correctly verified. If it is not, a copy of the application will be returned to the Applicant, and the application will not be further processed. If the Applicant wishes to continue with the application, a correct application must be resubmitted with a new filing fee. The original filing fee will not be returned.

**APPLICANT**

Optical Telephone Corporation

(NAME)

600 Blvd. South, Suite 104, Huntsville, AL 35802

(PHYSICAL ADDRESS - STREET, SUITE NUMBER, CITY, STATE, ZIP)

(MAILING ADDRESS - IF DIFFERENT FROM ABOVE)

Yes [ ] No [ X ] Does the Applicant own, lease, or operate transmission facilities (whether within North Carolina or not) which will be used to complete intrastate calls in North Carolina?

Yes [ ] No [ X ] Has the Applicant provided in the past or is the Applicant currently providing intrastate long distance service in North Carolina?

If the answer to the above question is yes, attach a detailed explanation.

Yes [ ] No [ X ] Does the Applicant intend to operate under an assumed name?

If the answer to the above question is yes, provide the assumed name or names on an attached sheet.

**Special Provisions Applicable To Long Distance Carriers Intending To Offer Alternative Operator Services (AOS)**

The Commission has stated that an AOS provider "specializes in the business of offering operator services to transient venues. The 'customer of the AOS is not the end-user, but what is called a 'traffic aggregator'--i.e., a payphone provider, a hotel, motel, hospital, or like establishment serving the traveling public." Both the AOS provider and the contracting party have an interest in keeping the rates charged to the end user high, and there is an inherent problem in the transient venue with adequate customer notice and choice. In previous cases, the Commission has concluded that calls made from aggregator locations by end users who are not customers of the long distance carrier should be considered AOS-type calls. If the long distance carrier's intrastate minutes of use from these types of calls exceed fifty (50%) of its total intrastate minutes of use, then the long distance carrier should be classified as an AOS provider. (See Order issued July 25, 1994, in Docket No. P-316) The Commission, in its October 21, 1988, Order in Docket No. P-100, Sub 101, concluded that long distance carriers classified as AOS providers would not be certified.

Yes [ ] No [ X ] Does the Applicant intend to provide operator assisted calls?

Yes [ ] No [ X ] Does the Applicant intend to complete intrastate calls originating at aggregator locations?

\_\_\_\_\_ %

If the answer to the above question is yes, what is the amount of usage the Applicant estimates it will have from intrastate AOS-type calls expressed as a percentage of total intrastate usage?



**COMMISSION CONTACTS**

**FOR: GENERAL REGULATORY MATTERS**

John Ross  
(NAME- PRINTED OR TYPED)  
600 Blvd. South, Suite 104, Huntsville, AL 35802  
(PHYSICAL ADDRESS - STREET, SUITE NUMBER, CITY, STATE, ZIP)  
(MAILING ADDRESS - IF DIFFERENT FROM ABOVE)  
(256) 705-3522 (256) 705-3513  
(TELEPHONE NUMBER) (FACSIMILE NUMBER)

**FOR: COMPLAINTS**

Mark Frost  
(NAME- PRINTED OR TYPED)  
600 Blvd. South, Suite 104, Huntsville, AL 35802  
(PHYSICAL ADDRESS - STREET, SUITE NUMBER, CITY, STATE, ZIP)  
(MAILING ADDRESS - IF DIFFERENT FROM ABOVE)  
(866) 318-5480 (256) 705-3513  
(TELEPHONE NUMBER) (FACSIMILE NUMBER)

**FOR: REGULATORY FEE PAYMENT**

John Ross  
(NAME- PRINTED OR TYPED)  
600 Blvd. South, Suite 104, Huntsville, AL 35802  
(PHYSICAL ADDRESS - STREET, SUITE NUMBER, CITY, STATE, ZIP)  
(MAILING ADDRESS - IF DIFFERENT FROM ABOVE)  
(256) 705-3522 (256) 705-3513  
(TELEPHONE NUMBER) (FACSIMILE NUMBER)

**CERTIFICATION**

The undersigned certifies to the North Carolina Utilities Commission as follows:

1. That the Applicant, as a reseller, neither owns, leases, nor operates transmission facilities which are used to complete North Carolina intrastate calls.
2. That if the Applicant purchases or enters into a lease agreement for transmission facilities which will be used to complete intrastate calls in the State of North Carolina, the Applicant will file a petition to amend its Certificate of Public Convenience and Necessity.

3. That the Applicant complies with the requirements concerning the solicitation of customers as provided in Subpart K of Part 64 of the Federal Communications Commission's (FCC) Rules and Regulations.

4. That, if the Applicant provides operator services, it complies with the requirements concerning the provision of operator services to end users at aggregator locations provided in Subpart G of Part 64 of the FCC's Rules and Regulations.

5. That the Applicant has reviewed the following North Carolina General Statutes and Commission Rules and Regulations; and that the Applicant acknowledges that it is subject to such North Carolina General Statutes and Commission Rules and Regulations:

G.S. 62-111(a)	G.S. 62-115	G.S. 62-117
G.S. 62-118(a)	G.S. 62-140	G.S. 62-302
G.S. 62-310(a)	G.S. 62-311	
Commission Rules R12-1 through R12-9		Commission Rule R15-1

6. That the Applicant agrees to maintain its books and records in accordance with generally accepted accounting principles.

7. That the Applicant agrees to notify its affected customers, by direct mail or bill insert, regarding any increase in rates, regardless of whether other rates are reduced, at least fourteen (14) days in advanced of the effective date of the increase.

8. That the Applicant agrees to notify its affected customers, by direct mail or bill insert, at least fourteen (14) days in advance of the discontinuance of any service offering.

9. That the Applicant agrees to impose usage rates for operator assisted calls no higher than the usage rates for comparable calls of its basic long distance service.

10. That if the Applicant intends to operate under a name other than the exact name that appears on its articles of incorporation, partnership agreements, or a name other than its real name, that the name has been certified according to G.S. 66-68.

11. That the Applicant agrees to notify the North Carolina Utilities Commission, of any change in its (1) address, either physical or mailing; (2) Commission Contacts; or (3) name under which it does business (d/b/a) within thirty (30) days of the effective date of any such change by mailing a notice of such change to the following address:

Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4325

12. That the Applicant understands that falsification or failure to disclose any required information in the application may be grounds for denial or revocation of any certificate.

<u>Mark Frost</u> (SIGNATURE)	<u>President</u> (TITLE)
<u>Mark Frost</u> (NAME - PRINTED OR TYPED)	<u>6-26-01</u> (DATE)

**VERIFICATION**

STATE OF Georgia COUNTY OF Fulton

The above-named \_\_\_\_\_, personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing application and any exhibits, documents, and statements thereto attached are true as he verily believes.

WITNESS my hand and notarial seal, this 26 day of June, 2001.

My Commission Expires: Jan 10, 2001

Caterina Bergeron  
Signature of Notary Public

Caterina Bergeron  
Name of Notary Public - Typed or Printed

Note to Notary: See verification requirements under "Completing the Application"

**ARKANSAS PUBLIC SERVICE COMMISSION  
UTILITIES DIVISION**

**INTEREXCHANGE CARRIERS, OPERATOR SERVICES, PRIVATE PAY  
TELEPHONE PROVIDERS**

**REPORT ON GROSS REVENUES FOR THE YEAR ENDED DECEMBER 31, 2001**

Please complete and return to: Peggy Blanton, Audit Section  
Arkansas Public Service Commission  
1000 Center Street  
Post Office Box 400  
Little Rock, Arkansas 72203-0400

RECEIVED  
3/18/02  
ARK. PUBLIC SERVICE COM. M  
AUDIT SECTION

Report is due on or before March 31, 2002

COMPANY NAME	American Digital Satellite Telephone, Inc.
D/B/A	
LOCATED AT	500 N. Rainbow Blvd #300 Las Vegas NV 89107

GROSS REVENUES RECEIVED	Arkansas Jurisdiction (Intrastate Only)	System (Total Company)
	\$ <u>0</u>	\$ <u>0</u>

STATE OF GA COUNTY OF F. Ltn

The undersigned Dan Galt (Name), President (Title) of the respondent, on oath does say that the above statement of Gross Revenues was prepared under his/her direction from the original books and records reflecting operations covered by such report; that he/she has examined the same and said report is correct to the best of his/her knowledge and belief.

  
(Signature)

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 4 DAY OF Mar, 2002

  
Notary Public

Place Seal Here

My Commission Expires 3/2/04

*Docket*

JUL 2 10 49 AM '01

BEFORE THE  
ARKANSAS PUBLIC SERVICE COMMISSION

FILED

Application of )  
 )  
America's Digital Satellite Telephone )  
 )  
for Approval to Offer, Render, Furnish, )  
or Supply Telecommunications Services )  
as a Reseller of Services to the Public in )  
the State of Arkansas )

Docket No. 01-158-U

To the Arkansas Public Service Commission:

**APPLICATION OF AMERICA'S DIGITAL SATELITE TELEPHONE**

America's Digital Satellite Telephone, ("ADST" or "Applicant") hereby petitions the Arkansas Public Service Commission ("Commission") for the issuance of a Certificate of Public Convenience and Necessity authorizing it to resell long distance telecommunications services within the State of Arkansas. The following general information and specific exhibits are furnished in support thereof:

**1. Name and Address of Applicant**

America's Digital Satellite Telephone  
3750 South Jones Blvd.  
Las Vegas, NV 89103  
(702) 221-8855 Telephone  
(866) 678-6611 Facsimile

**2. Contact Person**

Damian Cipriani is the sole owner, officer and shareholder of ADST. He may be reached at the address, phone and fax numbers listed above.

**3. Certificate of Incorporation and Other Corporate Matters**

Applicant was incorporated under the laws of the State of Nevada on February 3, 2000 as America's Digital Satellite Telephone. A copy of its Articles of Incorporation is attached hereto as Exhibit A. A copy of Applicant's Certificate of Authority to transact business in Arkansas is attached hereto as Exhibit B.

**4. The Service to be Offered by Applicant and the Territory to be Served**

Applicant intends to offer resold long distance telecommunications services throughout the entire State of Arkansas. Upon certification, Applicant intends to provide 1+ and calling card (post-paid) services. As a switchless reseller, Applicant has no points of presence in the State of Arkansas, and does not own, lease, or operate any switching, transmission, or other physical facilities in the State of Arkansas, and no such facilities will be used by Applicant in providing long distance services in the State of Arkansas. Rather, Applicant will utilize the facilities of its underlying facilities-based providers in the State of Arkansas.

Applicant is currently authorized to provide interexchange services in Colorado, Iowa, Michigan, Montana, New Jersey, and Virginia. No such applications have been denied. Applicant's services will be available on a full-time basis to business and residential consumers within the entire State of Arkansas, twenty-four hours per day, seven days per week. Applicant will bill customers *via the mechanisms of underlying local exchange carriers*, and offers a toll-free customer service number to answer questions regarding billing and services. The customer service number is provided on all bills and statements.

**5. Financial Qualifications**

*See Exhibit C.*

**6. Technical Qualifications**

See Exhibit D.

**7. Proposed Tariff**

See Exhibit E.

**8. Attorney of Record**

Correspondence concerning this Application should be addressed to Applicant's counsel:

Thomas K. Crowe, Esq.  
Law Offices of Thomas K. Crowe, P.C.  
2300 M Street, N.W., Suite 800  
Washington, D.C. 20037  
(202) 973-2890 Telephone  
(202) 973-2891 Facsimile

**9. Service Area**

ADST intends to offer its services within and throughout the entire State of Arkansas.

**10. Market**

ADST plans to serve both business and residential customers.

**11. Custodian of Accounting Records**

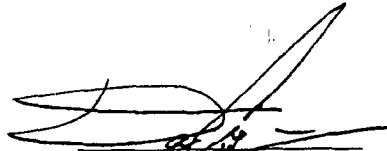
Applicant's custodian for its accounting records and supporting documentation is:

Damian Cipriani  
America's Digital Satellite Telephone  
3750 South Jones Blvd.  
Las Vegas, NV 89103  
(702) 221-8855 Telephone  
(866) 678-6611 Facsimile

Applicant's accounting records and supporting documentation are, and will be, maintained at the above-listed address.

As demonstrated above, ADST respectfully requests that the Commission grant the instant application to operate as a reseller of toll services.

Respectfully submitted,



Damian Cifriani,  
President  
America's Digital Satellite Telephone  
3750 South Jones Blvd.  
Las Vegas, NV 89103

Of Counsel:  
Thomas K. Crowe  
LAW OFFICES OF THOMAS  
K. CROWE, P.C.  
2300 M Street, N.W., Suite 800  
Washington, D.C. 20037  
(202) 973-2890

Dated: 6/29/01



VERIFICATION

State of Georgia :  
County of Fulton :

ss.

Damian Cipriani, Affiant, being duly sworn according to law, deposes and says that:

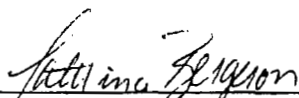
He is the President of America's Digital Satelite Telephone;

He is authorized to and does make this affidavit for said corporation;

That the facts set forth above are true and correct to the best of his knowledge, information, and belief and that he expects said corporation to be able to prove the same at any hearing hereof.

  
Signature of Affiant

Sworn and subscribed before me this 27 day of June, 2001.

  
Signature of Official Administering Oath

My commission expires Jan. 10, 2005.

**EXHIBIT A**

**ARTICLES OF INCORPORATION**

Date: April 21, 2004

01/30/01 11:36 FAX

010



DEAN HELLER  
Secretary of State

101 North Carson Street, Suite 3  
Carson City, Nevada 89701-4786  
(775) 684 5708



Office Use Only:

Important: Read attached instructions before completing form.

1. <b>Name of Corporation:</b>	America's Digital Satellite Telephone											
2. <b>Resident Agent Name and Street Address:</b> <small>(Must be a Nevada address where services may be rendered)</small>	Name: <u>Dominic A. Cipriani</u> Street Address: <u>3750 South Jones Blvd Las Vegas, NEVADA 89103</u> <small>City Zip Code</small>											
3. <b>Shares:</b> <small>(No. of shares, corporation authorized to issue)</small>	Number of shares with par value: <u>100,000</u> Par value: <u>01</u> Number of shares without par value: _____											
4. <b>Governing Board:</b> <small>(List all)</small>	Shall be styled as _____ Directors or _____ Trustees											
<b>Names, Addresses, Number of Board of Directors/Trustees:</b>	The First Board of <u>Directors</u> Trustees shall consist of <u>1</u> members whose names and addresses are as follows: <u>Dominic A. Cipriani</u> Name: _____ <u>3750 S. Jones Blvd Las Vegas, NV 89103</u> Address: _____ City, State, Zip: _____											
5. <b>Purpose:</b> <small>(Optional-See Instructions)</small>	The purpose of this Corporation shall be: <u>1 + long Distance</u>											
6. <b>Other Matters:</b> <small>(See Instructions)</small>	Number of additional pages attached: _____											
7. <b>Names, Addresses and Signatures of Incorporators:</b> <small>(Signatures must be notarized. Also attach local papers if there are more than 2 incorporators.)</small>	<table border="0"> <tr> <td data-bbox="388 1085 892 1149">           Name: <u>Redney Harrison</u>            Address: <u>209 Judson Way Alhambra CA 91802</u>            City, State, Zip         </td> <td data-bbox="892 1085 1425 1149">           Name: _____            Address: _____            City, State, Zip         </td> </tr> <tr> <td data-bbox="388 1149 892 1266">           Signature: <u>[Signature]</u> </td> <td data-bbox="892 1149 1425 1266">           Signature: _____         </td> </tr> </table>		Name: <u>Redney Harrison</u> Address: <u>209 Judson Way Alhambra CA 91802</u> City, State, Zip	Name: _____ Address: _____ City, State, Zip	Signature: <u>[Signature]</u>	Signature: _____						
Name: <u>Redney Harrison</u> Address: <u>209 Judson Way Alhambra CA 91802</u> City, State, Zip	Name: _____ Address: _____ City, State, Zip											
Signature: <u>[Signature]</u>	Signature: _____											
<b>Notary:</b>	<table border="0"> <tr> <td data-bbox="388 1266 892 1340">           This instrument was acknowledged before me on  <u>February 3, 2000</u> by _____         </td> <td data-bbox="892 1266 1425 1340">           This instrument was acknowledged before me on _____ by _____         </td> </tr> <tr> <td data-bbox="388 1340 892 1404">           Name of person: <u>Redney Harrison</u> </td> <td data-bbox="892 1340 1425 1404">           Name of person: _____         </td> </tr> <tr> <td data-bbox="388 1404 892 1489">           As incorporator of <u>America's Digital Satellite Telephone</u>  <small>(Name of party on behalf of whom instrument executed)</small> </td> <td data-bbox="892 1404 1425 1489">           As incorporator of _____  <small>(Name of party on behalf of whom instrument executed)</small> </td> </tr> <tr> <td data-bbox="388 1489 892 1574">           Signature: <u>[Signature]</u>            Notary Public Signature         </td> <td data-bbox="892 1489 1425 1574">           Signature: _____            Notary Public Signature         </td> </tr> <tr> <td data-bbox="388 1574 892 1723">           (affix notary stamp or seal)         </td> <td data-bbox="892 1574 1425 1723">           (affix notary stamp or seal)         </td> </tr> </table>		This instrument was acknowledged before me on <u>February 3, 2000</u> by _____	This instrument was acknowledged before me on _____ by _____	Name of person: <u>Redney Harrison</u>	Name of person: _____	As incorporator of <u>America's Digital Satellite Telephone</u> <small>(Name of party on behalf of whom instrument executed)</small>	As incorporator of _____ <small>(Name of party on behalf of whom instrument executed)</small>	Signature: <u>[Signature]</u> Notary Public Signature	Signature: _____ Notary Public Signature	(affix notary stamp or seal)	(affix notary stamp or seal)
This instrument was acknowledged before me on <u>February 3, 2000</u> by _____	This instrument was acknowledged before me on _____ by _____											
Name of person: <u>Redney Harrison</u>	Name of person: _____											
As incorporator of <u>America's Digital Satellite Telephone</u> <small>(Name of party on behalf of whom instrument executed)</small>	As incorporator of _____ <small>(Name of party on behalf of whom instrument executed)</small>											
Signature: <u>[Signature]</u> Notary Public Signature	Signature: _____ Notary Public Signature											
(affix notary stamp or seal)	(affix notary stamp or seal)											
8. <b>Certificate of Acceptance of Appointment of Resident Agent:</b>	<u>Dominic A. Cipriani</u> hereby accept appointment as Resident Agent for the above named corporation. Signature of Resident Agent: <u>[Signature]</u> Date: _____											

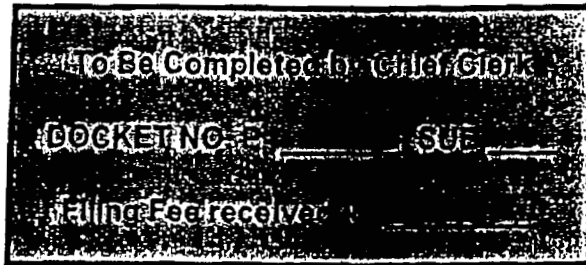
This form must be accompanied by appropriate fees. See attached fee schedule.

Nevada Secretary of State Form CORP/ART 1000.01  
Revised 08/01/99

**APPLICATION FOR A CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY TO  
OFFER LONG DISTANCE TELECOMMUNICATIONS  
SERVICE BY A RESELLER**

**FILED**  
JUL 26 2001

Clerk's Office  
N.C. Utilities Commission



PH291 SUBO

**Note:** To apply for a Certificate, Applicant must submit a filing fee of \$250.00 and the typed original and 9 copies of this document to the Commission at the following address:

Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4325

The application must be properly completed and correctly verified. If it is not, a copy of the application will be returned to the Applicant, and the application will not be further processed. If the Applicant wishes to continue with the application, a correct application must be resubmitted with a new filing fee. The original filing fee will not be returned.

**APPLICANT**

Miko Telephone Communications, Inc.  
\_\_\_\_\_  
(NAME)

1 Chase Corp. Drive, Suite 490, Birmingham, AL 35244  
\_\_\_\_\_  
(PHYSICAL ADDRESS - STREET, SUITE NUMBER, CITY, STATE, ZIP)

\_\_\_\_\_  
(MAILING ADDRESS - IF DIFFERENT FROM ABOVE)

Yes [ ] No [ X ] Does the Applicant own, lease, or operate transmission facilities (whether within North Carolina or not) which will be used to complete intrastate calls in North Carolina?

Yes [ ] No [ X ] Has the Applicant provided in the past or is the Applicant currently providing intrastate long distance service in North Carolina?

If the answer to the above question is yes, attach a detailed explanation.

Yes [ ] No [ X ] Does the Applicant intend to operate under an assumed name?

If the answer to the above question is yes, provide the assumed name or names on an attached sheet.

**Special Provisions Applicable To Long Distance Carriers Intending To Offer Alternative Operator Services (AOS)**

The Commission has stated that an AOS provider "specializes in the business of offering operator services to transient venues. The 'customer of the AOS is not the end-user, but what is called a 'traffic aggregator'--i.e., a payphone provider, a hotel, motel, hospital, or like establishment serving the traveling public." Both the AOS provider and the contracting party have an interest in keeping the rates charged to the end user high, and there is an inherent problem in the transient venue with adequate customer notice and choice. In previous cases, the Commission has concluded that calls made from aggregator locations by end users who are not customers of the long distance carrier should be considered AOS-type calls. If the long distance carrier's intrastate minutes of use from these types of calls exceed fifty (50%) of its total intrastate minutes of use, then the long distance carrier should be classified as an AOS provider. (See Order issued July 25, 1994, in Docket No. P-316) The Commission, in its October 21, 1988, Order in Docket No. P-100, Sub 101, concluded that long distance carriers classified as AOS providers would not be certified.

Yes [ ] No [ X ] Does the Applicant intend to provide operator assisted calls?

Yes [ ] No [ X ] Does the Applicant intend to complete intrastate calls originating at aggregator locations?

\_\_\_\_\_ %

If the answer to the above question is yes, what is the amount of usage the Applicant estimates it will have from intrastate AOS-type calls expressed as a percentage of total intrastate usage?

**COMMISSION CONTACTS**

**FOR: GENERAL REGULATORY MATTERS**

Margaret Currie, President

(NAME- PRINTED OR TYPED)

1 Chase Corp. Drive, Suite 490, Birmingham, AL 35244

(PHYSICAL ADDRESS - STREET, SUITE NUMBER, CITY, STATE, ZIP)

(MAILING ADDRESS - IF DIFFERENT FROM ABOVE)

(205) 980-8806

(TELEPHONE NUMBER)

(205) 733-1153

(FACSIMILE NUMBER)

**FOR: COMPLAINTS**

same as above

(NAME- PRINTED OR TYPED)

(PHYSICAL ADDRESS - STREET, SUITE NUMBER, CITY, STATE, ZIP)

(MAILING ADDRESS - IF DIFFERENT FROM ABOVE)

(866) 705-3082

(TELEPHONE NUMBER)

(866) 228-9495

(FACSIMILE NUMBER)

**FOR: REGULATORY FEE PAYMENT**

same as above

(NAME- PRINTED OR TYPED)

(PHYSICAL ADDRESS - STREET, SUITE NUMBER, CITY, STATE, ZIP)

(MAILING ADDRESS - IF DIFFERENT FROM ABOVE)

(TELEPHONE NUMBER)

(FACSIMILE NUMBER)

**CERTIFICATION**

The undersigned certifies to the North Carolina Utilities Commission as follows:

1. That the Applicant, as a reseller, neither owns, leases, nor operates transmission facilities which are used to complete North Carolina intrastate calls.
2. That if the Applicant purchases or enters into a lease agreement for transmission facilities which will be used to complete intrastate calls in the State of North Carolina, the Applicant will file a petition to amend its Certificate of Public Convenience and Necessity.

3. That the Applicant complies with the requirements concerning the solicitation of customers as provided in Subpart K of Part 64 of the Federal Communications Commission's (FCC) Rules and Regulations.

4. That, if the Applicant provides operator services, it complies with the requirements concerning the provision of operator services to end users at aggregator locations provided in Subpart G of Part 64 of the FCC's Rules and Regulations.

5. That the Applicant has reviewed the following North Carolina General Statutes and Commission Rules and Regulations; and that the Applicant acknowledges that it is subject to such North Carolina General Statutes and Commission Rules and Regulations:

G.S. 62-111(a)

G.S. 62-115

G.S. 62-117

G.S. 62-118(a)

G.S. 62-140

G.S. 62-302

G.S. 62-310(a)

G.S. 62-311

Commission Rules R12-1 through R12-9

Commission Rule R15-1

6. That the Applicant agrees to maintain its books and records in accordance with generally accepted accounting principles.

7. That the Applicant agrees to notify its affected customers, by direct mail or bill insert, regarding any increase in rates, regardless of whether other rates are reduced, at least fourteen (14) days in advanced of the effective date of the increase.

8. That the Applicant agrees to notify its affected customers, by direct mail or bill insert, at least fourteen (14) days in advance of the discontinuance of any service offering.

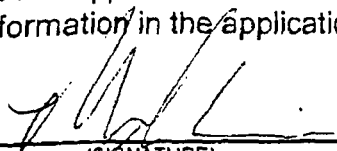
9. That the Applicant agrees to impose usage rates for operator assisted calls no higher than the usage rates for comparable calls of its basic long distance service.

10. That if the Applicant intends to operate under a name other than the exact name that appears on its articles of incorporation, partnership agreements, or a name other than its real name, that the name has been certified according to G.S. 66-68.

11. That the Applicant agrees to notify the North Carolina Utilities Commission, of any change in its (1) address, either physical or mailing; (2) Commission Contacts; or (3) name under which it does business (d/b/a) within thirty (30) days of the effective date of any such change by mailing a notice of such change to the following address:

Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4325

12. That the Applicant understands that falsification or failure to disclose any required information in the application may be grounds for denial or revocation of any certificate.

 _____ (SIGNATURE)	President _____ (TITLE)
Margaret Currie _____ (NAME - PRINTED OR TYPED)	7/9/01 _____ (DATE)

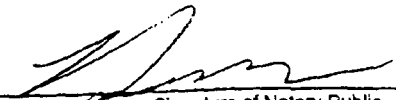
**VERIFICATION**

STATE OF Georgia COUNTY OF Fulton

The above-named Margaret Currie, personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing application and any exhibits, documents, and statements thereto attached are true as he verily believes.

WITNESS my hand and notarial seal, this 9 day of July, 2001.

My Commission Expires: 3/2/02

  
\_\_\_\_\_  
Signature of Notary Public

Robert Garrison  
\_\_\_\_\_  
Name of Notary Public - Typed or Printed

Note to Notary: See verification requirements under "Completing the Application"



**COMPLETING THE APPLICATION**

1. This application is to be used to apply for a Certificate of Public Convenience and Necessity from the North Carolina Utilities Commission which, when granted, will authorize the holder to provide intrastate long distance service as a reseller. By definition, a reseller neither owns, leases, nor operates transmission facilities which are used to complete intrastate calls in the State of North Carolina. Applications for authority to provide other types of long distance service must be filed in accordance with other Commission regulations.
2. The spaces in the shaded block on page 1 will be completed by the Chief Clerk when the application is received at the Commission's offices. The remainder of the application is to be completed by the Applicant and verified before a notary public.
3. The name of the Applicant must be the real name, as distinguished from a trade name or d/b/a, of the individual, the partnership, or the corporation applying for certification.
4. If the Applicant intends to operate under a name other than the exact name that appears on the articles of incorporation, partnership agreements, or a name other than its real name, this must be a name that has been certified according to G.S. 66-68.
5. Signature. This block is for the signature of the applicant's responsible party. It is to be the individual or sole proprietor, one of the general partners, or a management official employed by the corporation. Be sure to specify the title of the management official.
6. Verification. The name of the person who completes and signs the application must be typed or printed by the notary in the space provided in the verification. The notary's name must be typed or printed below the notary's seal. The verification must be affixed to the original and each of the ten copies.

Date: April 21, 2004

# Certificate of Appointment OF NOTARY PUBLIC

GEORGIA, FULTON COUNTY.

I, JUANITA HICKS, Clerk of the Superior Court in and

for said County, herby certify that RODNEY HARRISON

whose address is 230 JUDSON WAY,

ALPHARETTA GA 30022-0000

Age 37, Sex MALE, was duly appointed and sworn in as a Notary Public under the

provisions of O. C. G. A. Title 45, Chapter 17, Article 1, as amended, that the term of office,

begins on the 2 day of MARCH, XX 2001, and expires on the 01

day of MARCH, XX 2005

Signature of Applicant

WITNESS my hand and seal of said Court, this 2 day of

MARCH, XX 2001

*Juanita Hicks*

Clerk of the Superior Court FULTON County, Georgia.



BK00657P6067

RODNEY HARRISON

I, \_\_\_\_\_ do solemnly swear that I will well and truly perform the duties of a Notary Public for the State of Georgia to the best of my ability, and I further swear that I am not the holder of any public money belonging to the State and unaccounted for, so help me God.

Sworn to and subscribed before me this \_\_\_\_\_ day of MARCH, XX 2001

APPLICATION FOR NOTARY PUBLIC COMMISSION

GEORGIA, FULTON COUNTY

To the Honorable JUANITA HICKS Clerk of Superior Court of said county:

I, Rodney Harrison, in making this application for a Notary Public

Commission, do hereby state that (1-a) I reside in this county at the address of 230 Judson Way

Atlanta, GA 30022, OR (1-b) I am a resident of a state bordering on the State of Georgia and carry on a business or profession in the State of Georgia in this county or am regularly employed in the

State of Georgia in this county at the address of 230 Hembree Place Roswell GA 30076

(2) that my home telephone number is 770-447-1873, (4) that I am 37 years of age, (5) that I am

(male/female), male (6) that I am White (Asian, Black, Hispanic, Indian, White, Other), (7) that my

date of birth is December 20, 1963, (8) that my Social Security number is [REDACTED]

(9) I am at least eighteen years old; and I can read and write the English language.

I, Rodney Harrison, further state that I submit this application to be appointed a notary public pursuant to the provisions of Title 45, Chapter 17, Article 1, as amended, of the Official Code of Georgia Annotated. I list below all denials, revocations, suspensions, restrictions or resignations of any notary commission held by me and list below all my criminal conviction(s), including any plea(s) of nolo contendere, except minor traffic violations:

Description	Date of Action
<u>N/A</u>	

DECLARATION OF APPLICANT

I, Rodney Harrison, do solemnly swear or affirm under penalty of perjury  
(Name of Applicant)

that the personal information I have written in this application is true, complete, and correct.

[Signature]  
(Signature of Applicant)

STATE OF GEORGIA

COUNTY OF FULTON

On this 2 day of March, 2001, before me appeared,

Rodney Harrison, the person who signed the preceding declaration of applicant in my presence and who wrote or affirmed that he understood the document and freely declared it to be truthful. (he/she)

[Signature]  
(Official Signature of Notary)

442091

(Official Seal of Notary)

K#14744

BK00657PG068

GEORGIA, FULTON COUNTY

To the Honorable JUANITA HICKS Clerk of Superior Court of said county:

I, JOHN W LITTLE, being 18 years of age or older and a resident of  
(Name of Endorser)

FULTON, believe the applicant for Notary Public Commission,  
(Name of County)

Rodney Harrison, who is not related to myself, to be a person of  
(Name of Applicant)

integrity, good moral character, and capable of performing notarial acts.

3-2-01  
(Date)

[Signature]  
(Signature of Endorser)  
596 KENSINGTON FARMS DR  
ALPHARETTA GA 30004  
(Home Address of Endorser)

I, Geri Duty, being 18 years of age or older and a resident of  
(Name of Endorser)

FULTON, believe the applicant for Notary Public Commission,  
(Name of County)

Rodney Harrison, who is not related to myself, to be a person of  
(Name of Applicant)

integrity, good moral character, and capable of performing notarial acts.

3-2-01  
(Date)

[Signature]  
(Signature of Endorser)  
2035 N. Creek Cir  
Alpharetta GA 30004  
(Home Address of Endorser)

Pursuant to O.C.G.A. § 45-17-2.3, having read and considered, and it appearing that Rodney Harrison, the applicant, has met the requirements to be appointed a notary public, it is hereby ordered that said Rodney Harrison be and is hereby appointed a notary public for a four-year term beginning 3/2/01, upon his/her taking and subscribing the oath prescribed by law.

JUANITA HICKS  
Clerk of the Superior Court FULTON County

BK00657PG069



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COMES NOW C. David Butler, Chapter 7 Trustee of the Bankruptcy Estate of Sonic Communications, Inc., the Plaintiff in the above-styled case, and files this Amended Verified Complaint in the adversary proceeding formerly against John S. Buffa, Judy Ellen Buffa, Michael A. Buffa, Hugo Galluzzi (collectively referred to as "Original Buffa Defendants") and Timberland Construction Showcase, Inc. (Timberland Construction Showcase, Inc. and the Original Buffa Defendants are collectively referred to as "Original Defendants").

This Amended Complaint adds as defendants 1) the following individuals: Edith Main Anderson, Caterina "Cathy" Galluzzi Bergeron, Sylvain Bergeron, Antonio Buffa, Cynthia Buffa, Graziella Buffa, Jody Buffa, Joseph Buffa, Juan Buffa, Michael R. Buffa, Nino Buffa, Rachael Buffa, Rosa Buffa, Santiago "Santi" Buffa, Vincent "Vince" Buffa, Damian Cipriani, Luis Cipriani, Geri Buffa Clary, Marc H. Lewis, Lisa Sutton Buffa, John Vitale, Jose "Joe" Vitale and Martha Vitale (collectively referred to as the "Related Individual Defendants") and 2) the following entities: AirPulse, Inc., America's Tele- Network Corporation, Brookside Community Builders, Inc., C & B Consulting, Inc., C & S Consulting, CS Systems, Inc., CS Enterprises, Crabapple Beverage, Computer Madre, Data Tree, Inc., DC Computing Services, Inc., GC Accounting, Grateful Data, Harbor Marketing Services, Inc., JCB Marketing, Inc., L.V.C. Consulting, Inc., Main Enterprises, Inc., Michael's Windows and Glass Doors, Micro Consulting Group, Inc., Personal Computing Solutions, Inc. a/k/a PC Solutions a/k/a Personal Computing Solutions, MHL Consulting, Inc., QBP, Inc., Southern Media Systems, Inc., and Symtech, Inc. (collectively referred to as the "Defendant Family Companies"). The Original Buffa Defendants and the Related Individual Defendants are collectively referred to as the "Individual Defendants". The Original Defendants, the Related Individual Defendants, and the Defendant Family Companies are collectively referred to as the "Defendants".

This is an action seeking to set aside certain fraudulent conveyances and transfers from Sonic Communications, Inc. to the Defendants, to require the return to the Estate of certain fraudulently conveyed assets, to recover certain voidable preferences, to recover

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damages for the unauthorized switching or "slamming" of Sonic's consumers' long distance service, and to recover damages for fraud, conversion, unjust enrichment and violations of the federal and state RICO statutes by the Defendants and for breaches of fiduciary duties of Defendants acting or serving as officers and/or directors of Sonic.

### I. JURISDICTION AND VENUE

1.

This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334.

2.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), (H) and (O).

3.

Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

#### A. The Debtor

4.

Sonic Communications, Inc. ("Sonic") filed a petition for relief under Chapter 11, Title 11, United States Code, on April 7, 1995 (the "Petition Date") styled In re Sonic Communications, Inc., Case No. 95-64899, United States Bankruptcy Court, Northern District of Georgia, Atlanta Division. Sonic remained in possession of its assets and continued to operate its business as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

5.

C. David Butler was appointed as the Chapter 11 Trustee for Sonic (hereinafter referred to as the "Trustee") on May 23, 1995. Pursuant to 11 U.S.C. § 1106, the Trustee has certain powers and duties, and is entitled to bring this adversary proceeding on Sonic's behalf under 11 U.S.C. §§ 542, 544, 547 and 548.

6.

On October 19, 1995, In re Sonic Communications, Inc. was converted to a case under Chapter 7 and Mr. Butler was appointed and qualified as Trustee in the Chapter 7 Case.

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**B. The Original Defendants**

7.

Upon information and belief, Defendant **John S. Buffa**, at various material times hereto, was the President of Sonic, a director of Sonic, and its majority shareholder.

John S. Buffa can be served with process in Fulton County at his residence at 765 Winnmark Court, Roswell, Georgia 30076.

8.

Defendant **Judy Ellen Buffa** is, and all times material hereto was, the wife of John S. Buffa. Upon information and belief, Judy Ellen Buffa was a director of Sonic from approximately 1992 to March 1994. Judy Ellen Buffa can be served with process in Fulton County at her residence at 765 Winnmark Court, Roswell, Georgia 30076.

9.

Defendant **Michael A. Buffa** is a brother of John S. Buffa. Michael A. Buffa, at various material times hereto was, the Vice President of Sonic, a director of Sonic, and a shareholder of Sonic. Michael A. Buffa can be served with process in Cherokee County at his residence at 241 Nacoochee Drive, Woodstock, Georgia 30188.

10.

Defendant **Hugo Galluzzi** is a cousin of John S. Buffa. Hugo Galluzzi, was the Chief Executive Officer, Chief Financial Officer, and Secretary of Sonic at various times during the events set forth herein. Hugo Galluzzi may be served with process in Fulton County at his residence at 275 Brandenburg Circle, Roswell, Georgia 30076.

11.

Defendant **Timberland Construction Showcase, Inc. ("Timberland")** is a Georgia corporation which, upon information and belief, is owned and/or controlled, in whole or in part by Hugo Galluzzi and/or John S. Buffa. Timberland may be served with process in Fulton County by serving its Chief Executive Officer Hugo Galluzzi at its principal place of business at 9755 Dogwood Road, Suite 100, Roswell, Georgia 30075 or by serving Hugo Galluzzi at 275 Brandenburg Circle, Roswell, Georgia 30076.

12.

Counsel for the Original Defendants acknowledged service of the original Verified Complaint on behalf of these Defendants on June 13, 1995 and filed an Answer on behalf of these Defendants on July 11, 1995.

**C. Related Individual Defendants**

13.

Defendant **Edith Main Anderson** is the mother-in-law of John S. Buffa's sister, Sat Mohinder Khalsa. Upon information and belief, Edith Anderson, at various material times hereto, was an employee of Sonic and owned and/or controlled, in whole or in part, Defendant **Main Enterprises, Inc.** Edith Anderson may be served with process in Fulton County at her residence at 372 Carriage Trace, Roswell, Georgia 30076.

14.

Defendant **Caterina "Cathy" Galluzzi Bergeron ("Cathy Bergeron")** is the sister of Hugo Galluzzi. Upon information and belief, Cathy Bergeron, at various material times hereto, was an employee of Sonic and owned and/or controlled, in whole or in part, Defendants **C & B Consulting, Inc.** and **C & S Consulting.** Cathy Bergeron may be served with process in Fulton County at her residence at 320 Cotton Court, Alpharetta, Georgia 30202.

15.

Defendant **Sylvain Bergeron** is the husband of Cathy Bergeron. Sylvain Bergeron may be served with process in Fulton County at his residence at 320 Cotton Court, Alpharetta, Georgia 30202.

16.

Defendant **Antonio Buffa** is the half-brother of John S. Buffa. Upon information and belief, Antonio Buffa, at various material times hereto, was an employee of Sonic and owned and/or controlled, in whole or in part, Defendant **Personal Computing Solutions, Inc.** Antonio Buffa may be served with process in Fulton County at his residence at 210 Piney Hill Court, Alpharetta, Georgia 30202.

17.

Defendant **Graziella Buffa** is the wife of Antonio Buffa. Upon information and belief, Graziella Buffa, at various material times hereto, was an employee of Sonic and, upon information and belief, owned and/or controlled, in whole or in part, **Personal Computing Solutions, Inc.** Graziella Buffa may be served with process in Fulton County at her residence at 210 Piney Hill Court, Alpharetta, Georgia 30202.

18.

Defendant **Juan Buffa** is a cousin of John S. Buffa. Upon information and belief, Juan Buffa, at various material times hereto, was an employee of Sonic and owned and/or controlled, in whole or in part, Defendant **JCB Marketing, Inc.** Juan Buffa may be served with process in Fulton County at his residence at 10720 South Kimball Bridge Crossing, Alpharetta, Georgia 30202.

19.

Defendant **Cynthia Buffa** is the wife of Juan Buffa. Upon information and belief, Cynthia Buffa owned and/or controlled, in whole or in part, Defendant **JCB Marketing, Inc.** Cynthia Buffa may be served with process in Fulton County at her residence at 10720 South Kimball Bridge Crossing, Alpharetta, Georgia 30202.

20.

Defendant **Jody Buffa** is the wife of Michael A. Buffa. Jody Buffa may served with process in Cherokee County at her residence at 241 Nacoochee Drive, Woodstock, Georgia 30188.

21.

Defendant **Joseph Buffa** is a cousin of John S. Buffa. Upon information and belief, Joseph Buffa, at various material times hereto, was an employee of Sonic and owned and/or controlled, in whole or in part, Defendant **Symtech, Inc.** Joseph Buffa may be served with process in Fulton County at his residence at 10755 Willow Meadow Circle, Alpharetta, Georgia 30202.

22.

Defendant **Rachael Buffa** is the wife of Joseph Buffa. Rachael Buffa may be served with process in Fulton County at her residence at 10755 Willow Meadow Circle, Alpharetta, Georgia 30202.

23.

Defendant **Michael R. Buffa** is an uncle of Defendant John S. Buffa. Upon information and belief, Michael R. Buffa was, at various material times hereto, a director and/or shareholder of Sonic. Michael R. Buffa may be served with process in Broward County at his residence at 1251 East Sample Road, Pompano Beach, Florida 33064.

24.

Defendant **Nino Buffa** is the father of John S. Buffa and Michael A. Buffa. Upon information and belief, Nino Buffa, at various material times hereto, was an employee of Sonic. Nino Buffa may be served with process in Fulton County at his residence at 10830 Morton's Crossing, Alpharetta, Georgia 30201.

25.

Defendant **Rosa Buffa** is the mother of John S. Buffa. Upon information and belief, Rosa Buffa, at various material times hereto, was purportedly an employee of Sonic. Rosa Buffa may be served with process in Fulton County at her residence at 436 Royal Creek Drive, Alpharetta, Georgia 30201.

26.

Defendant **Santiago "Santi" Buffa ("Santi Buffa")** is a cousin of John S. Buffa. Upon information and belief, Santi Buffa, at various material times hereto, was an employee of Sonic and owned and/or controlled, in whole or in part, Defendant **Micro Consulting Group, Inc.** Santi Buffa may be served with process in Fulton County at his residence at 125 Plantation Court, Alpharetta, Georgia 30202.

27.

Defendant **Lisa Sutton Buffa ("Lisa Sutton")** is the wife of Santi Buffa. Upon information and belief, Lisa Sutton, at various material times hereto, was an employee of



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Sonic. Lisa Sutton may be served with process in Fulton County at her residence at 125 Plantation Court, Alpharetta, Georgia, 30202.

28.

Defendant **Vincent "Vince" Buffa ("Vince Buffa")**, is a brother of John S. Buffa. Upon information and belief, Vince Buffa, at various material times hereto, was an employee of Sonic and owned and/or controlled, in whole or in part, Defendants **QBP, Inc.** and **Computer Madre**. Vince Buffa may be served with process in Fulton County at his residence at 655 Waterbrook Terrace, Roswell, Georgia 30076.

29.

Defendant **Damian Cipriani** is a cousin of John S. Buffa. Upon information and belief, Damian Cipriani, at various material times hereto, was an employee of Sonic and owned and/or controlled, in whole or in part, Defendant **DC Computing Services**. Damian Cipriani may be served with process in Fulton County at his residence at 275 Brandenburg Circle, Roswell, Georgia 30076.

30.

Defendant **Luis Cipriani** is a cousin of John S. Buffa. Upon information and belief, Luis Cipriani, at various material times hereto, was an employee of Sonic and owned and/or controlled, in whole or in part, Defendant **L.V.C. Consulting, Inc.** Luis Cipriani may be served with process in Fulton County at his residence at 275 Brandenburg Circle, Roswell, Georgia 30076.

31.

Defendant **Geri Buffa Clary ("Geri Clary")** is a cousin of John S. Buffa. Upon information and belief, Geri Clary, at various material times hereto, was an employee of Sonic and owned and/or controlled, in whole or in part, Defendant **GC Accounting**. Geri Clary may be served with process in Fulton County at her residence at 10900 Pinehigh Drive, Alpharetta, Georgia 30202.

32.

Defendant **Marc H. Lewis** is a brother-in-law of John S. Buffa. Upon information and belief, Marc Lewis, at various material times hereto, was an employee of Sonic and owned and/or controlled, in whole or in part, Defendants **MHL Consulting, Inc.** and **Grateful Data**. Marc Lewis may be served with process in Fulton County at his residence at 9395 Martin Road, Roswell, Georgia 30076.

33.

Defendant **John Vitale** is a cousin of John S. Buffa. Upon information and belief, John Vitale, at various material times hereto, was an employee of Sonic and owned and/or controlled, in whole or in part, Defendant **Southern Media Systems, Inc.** John Vitale may be served with process in Fulton County at his residence at 143 Teal Court, Roswell, Georgia 30076.

34.

Defendant **Jose "Joe" Vitale ("Joe Vitale")** is a cousin of John S. Buffa. Upon information and belief, at various material times hereto, Joe Vitale owned and/or controlled, in whole or in part, Defendants **CS Systems, Inc.** and **CS Enterprises**. Joe Vitale may be served with process in Fulton County at his residence at 1885 Six Branches Drive, Roswell, Georgia 30076.

35.

Defendant **Martha Vitale** is the wife of Joe Vitale. Upon information and belief, Martha Vitale, at various material times hereto, was an employee of Sonic and owned and/or controlled, in whole or in part, Defendants **CS Systems, Inc.** and **CS Enterprises**. Martha Vitale may be served with process in Fulton County at her residence at 1885 Six Branches Drive, Roswell, Georgia 30076.

**D. Defendant Family Companies**

36.

Defendant **AirPulse, Inc. ("AirPulse")** is a Georgia corporation. Upon information and belief, AirPulse is owned and/or controlled, in whole or in part, by John S.

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Buffa and/or Michael A. Buffa. AirPulse may be served with process in DeKalb County by serving Sandra Tasso, its registered agent, at its office at 1117 Perimeter Center West, Suite 510 East, Atlanta, Georgia 30338.

37.

Defendant **America's Tele-Network Corporation, Inc. ("ATN")** is a Delaware corporation. Upon information and belief, ATN is owned and/or controlled, in whole or in part, by John W. Little, brother-in-law of Joe Vitale. ATN may be served with process in Fulton County by serving its President John W. Little at 720 Hembree Place, Roswell, Georgia 30076.

38.

Defendant **Brookside Community Builders, Inc. ("Brookside")** is a Georgia corporation. Upon information and belief, Brookside is owned and/or controlled, in whole or in part, by John S. Buffa. Indeed, upon information and belief, Brookside is a sham corporation which is an instrumentality or alter ego of John S. Buffa, used by him to transact his own affairs. Brookside may be served in Fulton County by serving its registered agent, John S. Buffa, at its office at 9755 Dogwood Road, #230, Roswell, Georgia 30075 or by serving John S. Buffa at 765 Winnmark Court, Roswell, Georgia 30076.

39.

Defendant **C & B Consulting, Inc. ("C & B Consulting")** is a Georgia corporation. Upon information and belief, C & B Consulting is owned and/or controlled, in whole or in part, by Cathy Bergeron. Indeed, upon information and belief, C & B Consulting is a sham corporation which is an instrumentality or alter ego of Cathy Bergeron, used by her to transact her own affairs. C & B Consulting may be served with process in Fulton County by serving Cathy Bergeron at 320 Cotton Court, Alpharetta, Georgia 30202.

40.

Upon information and belief, Defendant **C & S Consulting** is the alter ego of Cathy Bergeron and/or predecessor entity to C & B Consulting. C & S Consulting may be served with process in Fulton County by serving Cathy Bergeron at 320 Cotton Court, Alpharetta, Georgia 30202.

41.

Defendant **CS Systems, Inc. ("CS Systems")** is a Georgia corporation. Upon information and belief, CS Systems is owned, in whole or in part, by Martha Vitale and/or Joe Vitale. CS Systems may be served with process in Fulton County by serving its registered agent Martha Vitale at its office at 1885 Six Branches Drive, Roswell, Georgia 30076.

42.

Upon information and belief, Defendant **CS Enterprises** is an alter ego, trade name, or predecessor of CS Systems. CS Enterprises may be served with process in Fulton County by serving Martha Vitale at CS Systems' office at 1885 Six Branches Drive, Roswell, Georgia 30076.

43.

Defendant **Crabapple Beverage ("Crabapple Beverage")** is a company owned and/or controlled, in whole or in part, by Michael A. Buffa and/or Jody Buffa. Crabapple Beverage may be served with process in Cherokee County by serving Michael A. Buffa at 241 Nacoochee Drive, Woodstock, Georgia 30188.

44.

Upon information and belief, Defendant **Computer Madre** is an alter ego or trade name of Vince Buffa. Computer Madre may be served with process in Fulton County by serving Vince Buffa at 655 Waterbrook Terrace, Roswell, Georgia 30076.

45.

Defendant **Data Tree, Inc. ("Data Tree")** is a Georgia corporation. Upon information and belief, Data Tree is owned and/or controlled, in whole or in part, by Hugo

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Galluzzi. Indeed, upon information and belief, Data Tree is a sham corporation which is an instrumentality or alter ego of Hugo Galluzzi, used by him to transact his own affairs. Data Tree may be served with process in Fulton County by serving its registered agent, Hugo Galluzzi at 275 Brandenburg Circle, Roswell, Georgia 30075.

46.

Upon information and belief, Defendant **DC Computing Services, Inc.** (DC Computing Services") is owned and/or controlled, in whole or in part, by Damian Cipriani. DC Computing Services may be served with process in Fulton County by serving Damian Cipriani at 275 Brandenburg Circle, Roswell, Georgia 30076.

47.

Upon information and belief, Defendant **GC Accounting** is a trade name or alter ego of Geri Clary. GC Accounting may be served with process in Fulton County by serving Geri Clary at 10900 Pinehigh Drive, Alpharetta, Georgia 30202.

48.

Upon information and belief, Defendant **Grateful Data** is a trade name or alter ego of Marc Lewis. Grateful Data may be served with process in Fulton County by serving Marc Lewis at 9395 Martin Road, Roswell, Georgia 30076.

49.

Defendant **Harbor Marketing Services, Inc.** ("Harbor Marketing") is allegedly a corporation. The Georgia Secretary of State has no listing for Harbor Marketing, either as a domestic or foreign corporation. Upon information and belief, Harbor Marketing is owned and/or controlled, in whole or in part, by Michael A. Buffa. Indeed, upon information and belief, Harbor Marketing is a sham corporation which is an instrumentality or alter ego of Michael A. Buffa, used by him to transact his own affairs. Harbor Marketing may be served with process in Cherokee County by serving Michael A. Buffa at 241 Nacoochee Drive, Woodstock, Georgia 30188.

50.

Defendant **JCB Marketing, Inc. ("JCB Marketing")** is a Georgia corporation. Upon information and belief, JCB Marketing is owned and/or controlled, in whole or in part, by Juan Buffa and/or Cynthia Buffa. Indeed, upon information and belief, JCB Marketing is a sham corporation which is an instrumentality or alter ego of Juan and Cynthia Buffa, used by them to transact their own affairs. JCB Marketing may be served with process in Fulton County by serving its registered agent Juan Buffa at its office at 10720 South Kimball Bridge Crossing, Alpharetta, Georgia 30202.

51.

Defendant **L.V.C. Consulting, Inc. ("L.V.C. Consulting")** is a Georgia corporation. Upon information and belief, L.V.C. Consulting is owned and/or controlled, in whole or in part by Luis Cipriani. Indeed, upon information and belief, L.V.C. Consulting is a sham corporation which is an instrumentality or alter ego of Luis Cipriani, used by him to transact his own affairs. L.V.C. Consulting may be served with process in Fulton County by serving its registered agent Luis Cipriani at its office at 275 Brandenburg Circle, Roswell, Georgia 30076.

52.

Defendant **Main Enterprises, Inc. ("Main Enterprises")** is allegedly a corporation. The Georgia Secretary of State has no listing for Main Enterprises, either as a domestic or foreign corporation. Upon information and belief, Main Enterprises is owned and/or controlled, in whole or in part, by Edith Anderson. Indeed, upon information and belief, Main Enterprises is a sham corporation which is an instrumentality or alter ego of Edith Anderson, used by her to transact her own affairs. Main Enterprises may be served with process in Fulton County by serving Edith Anderson at 372 Carriage Trace, Roswell, Georgia 30076.

53.

Upon information and belief, Defendant **Michael's Windows and Glass Doors ("Michael's Windows")**, is a trade name or the alter ego of Michael R. Buffa. Michael's

Windows may be served with process in Broward County by serving Michael R. Buffa at 1251 East Sample Road, Pompano Beach, Florida 33064.

54.

Defendant **Micro Consulting Group, Inc. ("Micro Consulting")** is allegedly a corporation. The Georgia Secretary of State has no listing for Micro Consulting, either as a domestic or foreign corporation. Upon information and belief, Micro Consulting is owned and/or controlled, in whole or in part, by Santi Buffa. Indeed, upon information and belief, Micro Consulting is a sham corporation which is an instrumentality or alter ego of Santi Buffa, used by him to transact his own affairs. Micro Consulting may be served with process in Fulton County by serving Santi Buffa at 125 Plantation Court, Alpharetta, Georgia 30202.

55.

Defendant **MHL Consulting, Inc. ("MHL Consulting")** is a Georgia corporation. Upon information and belief, MHL Consulting is owned and/or controlled, in whole or in part by Marc Lewis. Indeed, upon information and belief, MHL Consulting is a sham corporation which is an instrumentality or alter ego of Marc Lewis, used by him to transact his own affairs. MHL Consulting may be served with process in Fulton County by serving its registered agent Marc Lewis at 9395 Martin Road, Roswell, Georgia 30076.

56.

Defendant **Personal Computing Solutions, Inc. a/k/a PC Solutions a/k/a Personal Computing Solutions ("Personal Computing Solutions")** is a Georgia corporation. Upon information and belief, Personal Computing Solutions is owned and/or controlled, in whole or in part, by Antonio and/or Graziella Buffa. Indeed, upon information and belief, Personal Computing Solutions is a sham corporation which is an instrumentality or alter ego of Antonio and Graziella Buffa, used by them to transact their own affairs. Personal Computing Solutions may be served with process in Fulton County by serving its registered agent Antonio Buffa at 210 Piney Hill Court, Alpharetta, Georgia 30202.

57.

Defendant **QBP, Inc. ("QBP")** is a Georgia corporation. Upon information and belief, QBP is owned and/or controlled, in whole or in part, by Vince Buffa. Indeed, upon information and belief, QBP is a sham corporation which is an instrumentality or alter ego of Vince Buffa, used by him to transact his own affairs. QBP may be served with process in Fulton County by serving its registered agent Vince Buffa at its office at 655 Waterbrook Terrace, Roswell, Georgia 30076.

58.

Defendant **Southern Media Systems, Inc. ("Southern Media Systems")** is a Georgia corporation. Upon information and belief, Southern Media Systems is owned and/or controlled, in whole or in part, by John Vitale. Indeed, upon information and belief, Southern Media Systems is a sham corporation which is an instrumentality or alter ego of John Vitale, used by him to transact his own affairs. Southern Media Systems may be served with process in Fulton County by serving its registered agent John Vitale, at its office at 143 Teal Court, Roswell, Georgia 30076.

59.

Defendant **Symtech, Inc. ("Symtech")** is a Georgia corporation. Upon information and belief, Symtech is owned and/or controlled, in whole or in part, by Joseph Buffa. Indeed, upon information and belief, Symtech is a sham corporation which is an instrumentality or alter ego of Joseph Buffa, used by him to transact his own affairs. Symtech may be served with process in Fulton County by serving its registered agent, Joseph Buffa, at its office at 10755 Willow Meadow Circle, Alpharetta, Georgia 30202.

## II. CHRONOLOGICAL HISTORY

60.

Beginning no later than 1988, and continuing to the present day, the Individual Defendants have participated in a series of related fraudulent schemes to acquire money and property from consumers throughout the United States. The Individual Defendants then dispersed those funds through Sonic Communications, Inc. ("Sonic"), its predecessor



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companies, and the Defendant Family Companies for the personal use of these and other

Buffa family members.

Transworld Courier Services, Inc.

61.

On February 8 1988, Transworld Courier Services, Inc. ("TCS") was incorporated as a Georgia corporation. TCS was owned and/or controlled, in whole or in part, by John S. Buffa, Michael A. Buffa and/or Hugo Galluzzi. Upon information and belief, the majority of TCS' employees were relatives of John S. Buffa. Hugo Galluzzi, Martha Vitale and Michael A. Buffa were all employees of TCS at various times.

62.

Some, if not all, of the individuals who were related to John S. Buffa who worked for TCS formed companies through which they received payments for work purportedly done for TCS. M & J Telemarketing, a company owned and/or controlled, in whole or in part, by Martha Vitale and/or Joe Vitale, received payments for work purportedly done for TCS. Upon information and belief, the work performed for TCS by M & J Telemarketing, if any, was not nearly of a value reasonably equivalent to the payments.

63.

TCS ran classified advertisements in newspapers throughout the United States advertising the availability of a variety of jobs at a variety of companies. Each advertisement instructed those interested to call a "976" or "900" telephone number to receive more information. Upon information and belief, unbeknownst to them, the calling applicants were charged \$15 to \$18 for each minute of each call they made to the "900" and "976" numbers in response to the TCS job advertisements. Upon information and belief, from September 1989 through May 1990, consumers who telephoned TCS in response to these advertisements were billed at least \$2 million.

64.

Upon information and belief, TCS advertised courier jobs paying \$500 to \$1000 weekly when no such jobs were available. Upon information and belief, TCS and its

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representatives told calling applicants that they were required to purchase new cars as a condition of employment for the advertised courier jobs. Upon information and belief, TCS received up to \$1,500 from the car dealership for each such vehicle that was purchased.

65.

On July 25, 1990, the Federal Trade Commission ("FTC") filed an action against TCS and John S. Buffa, alleging that TCS and John S. Buffa were guilty of deceptive practices. The action, filed in the United States District Court for the Northern District of Georgia, was captioned: Federal Trade Commission v. Transworld Courier Services, Inc. d/b/a TCS, Inc. d/b/a TCS and John S. Buffa; 90-CV-1635-RHH. In April 1991, TCS and John S. Buffa were ordered by the Court to pay \$1 million to fully satisfy all monetary claims asserted by the FTC and to provide redress to the individuals who made toll calls to TCS in order to obtain information about jobs pursuant to the TCS advertisements.

66.

On October 10, 1991, TCS filed for bankruptcy in this Court.

Media Broadcasting Communications, Inc.

67.

On June 28, 1990, Media Broadcasting Communications, Inc. ("MBC") was incorporated. At all pertinent times, MBC was owned and/or controlled by John S. Buffa and/or Michael A. Buffa. Indeed, MBC's corporate address was 9755 Dogwood Road, Roswell, Georgia, the same location from which John S. Buffa, Michael A. Buffa and Hugo Galluzzi operated TCS, Timberland and Sonic. Nonetheless, Hugo Galluzzi, then no older than nineteen years old, was elected president of MBC, upon information and belief, so that John S. Buffa's involvement with MBC might be concealed.

68.

MBC, like TCS, placed advertisements in newspapers throughout the country concerning available jobs. Upon information and belief, MBC's newspaper advertisements included "800" numbers which job seekers were directed to call for further information.

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Upon information and belief, callers to these "800" numbers were directed to call "900" numbers for further information. Correspondence from MBC to interested consumers was sent under a fictitious name. Upon information and belief, at least seventeen complaints were lodged with the Better Business Bureau regarding MBC from June 1990 to June 1992.

69.

Upon information and belief, the majority of MBC's employees were relatives of John S. Buffa. Upon information and belief, in April 1991, on or about the time that the FTC won damages and restitution from TCS, all of the TCS employees became employees of MBC. Upon information and belief, Hugo Galluzzi, Antonio Buffa, Michael A. Buffa, Joseph Buffa, Santi Buffa, Edith Anderson, Graziella Buffa, Michael R. Buffa, Damian Cipriani, Martha Vitale and Joe Vitale were among the individuals paid as employees, directors, and/or independent contractors of MBC.

70.

As with TCS, some of the Related Individual Defendants formed companies through which they received payments for work purportedly done for MBC. For example, D&D Answering Service, a company owned and/or controlled, in whole or in part, by Hugo Galluzzi and/or Damian Cipriani, received payment for work purportedly done for MBC. Any work performed for MBC was not nearly of a value reasonably equivalent to the payments.

71.

Prior to October 17, 1991, Sonic Communications was used as a trade name of MBC.

72.

On October 17, 1991, one week after TCS filed for bankruptcy, Sonic was incorporated as a privately held company and commenced business in or about November, 1991. Judy Buffa and Michael R. Buffa were Sonic's initial Board of Directors and

shareholders. Guiseppe Vitale, another relative of John S. Buffa, was Sonic's initial president, secretary and treasurer.

73.

Sometime between June 1992 and the end of December 1993, MBC ceased doing business.

Sonic Communications, Inc.

74.

At all times relevant herein, Sonic has been engaged in interstate commerce in the business of purchasing or leasing long distance telephone service from entities providing long distance access and/or other carriers or wholesalers and then reselling long distance services to Sonic consumers and businesses. Sonic markets its long distance servicing contracts with Local Exchange Companies ("LECs") to provide billing and collection services for Sonic's accounts. Pacific Bell in California, NYNEX Corporation and New York Telephone in New York, and Ameritech Illinois in Illinois are some of the LECs which performed billing and collection services for Sonic. At all times material hereto, Sonic had written agreements with those LECs which performed billing and collection services for Sonic's accounts.

75.

Beginning at an exact date unknown to Trustee but, at the latest, since the spring of 1993, Sonic marketed and provided Sonic long distance service to Sonic consumers throughout the United States, including Illinois, California, Texas and New York. Sonic, by and through the Individual Defendants, targeted, among others a large block of consumers with Hispanic surnames.

76.

By order of the Bankruptcy Court, entered November 20, 1995, a class of Sonic consumers, defined as "All consumers whose long distance service was transferred to Sonic Communications, Inc., or transferred after direction by Sonic Communications, Inc. either by itself on to a designated underlying carrier (the "Sonic Class Members") was

conditionally certified for the purpose of implementing the terms of a settlement (the "Settlement") with the Sonic Class Members and others.

77.

The Settlement's terms are set forth in a separate "Findings of Fact, Conclusions of Law and Orders Approving Compromise and Settlement" entered on November 20, 1995 (the "Settlement Order"). Pursuant to and in accordance with the terms and conditions of the Settlement Order, the Trustee may proceed to prosecute the Sonic Class Member claims against the Defendants.

78.

Beginning, at the latest, in the Spring of 1993, Sonic, by and through the Individual Defendants, utilized interstate phone lines and/or the U.S. mails to cause billing data to be entered into the system of local exchange carriers ("LECs") operating in, *inter alia*, Illinois, Texas, California, and New York. This billing data caused Sonic Class Members' long distance service to be switched from their existing long distance carrier to Sonic by falsely indicating, *inter alia*, the Sonic Class Member had chosen Sonic, a practice known as "slamming."

79.

Slamming is prohibited by law in many states, including Georgia and the States where Sonic was selling long distance service.

80.

In many instances Sonic, by and through the actions of the Individual Defendants, switched the long distance carrier of Sonic Class Members without their knowledge or consent to Sonic, in the absence of any contact whatsoever from Sonic and in violation of applicable FCC regulations. At all times material herein, the Individual Defendants knew that the representations made by them, described in Paragraph 78, were false.

81.

By making the representations described in Paragraph 78, the Individual Defendants intended to induce the Sonic Class Members to unknowingly make long

distance phone calls utilizing Sonic's services and to thereby become liable to pay for these unauthorized services.

82.

Sonic Class Members relied on their belief that their chosen long distance service remained in effect in continuing to make long distance phone calls after the Individual Defendants had fraudulently switched their long distance service to Sonic, thereby causing them to unknowingly become allegedly liable for switching fees and long distance charges from Sonic.

83.

Sonic, by and through the actions of the Individual Defendants, switched other Sonic Class Members' long distance carriers to Sonic by engaging in the following acts and practices with the intent to induce members of the public to switch long distance carriers to Sonic: (a) mailing to Sonic Class Members negotiable checks in the amount of \$10.00; (b) placing on the back of each check, just below the endorsement line, the following words: "long distance rebate" or "Endorsement of this check switches your long distance service to Sonic or its underlying carrier ..." (c) printing these words in the faintest grey ink, and very small print, so that the consumer is unable or unlikely to see or to read the "agreement"; (d) failing to send a cover letter which makes clear to the Sonic Class Member that the negotiable instrument is anything other than a gift of \$10.00; and (e) failing to state that local phone companies generally charge \$5.00 plus tax per line to switch long distance carriers.

84.

As a result of the fraudulent and unauthorized switch of Sonic Class Members' long distance service to Sonic by the Individual Defendants' actions, each Sonic Class Member was charged a switching fee and significantly higher long distance rates than were charged by their previous long distance carriers.

85.

Many of the Sonic Class Members unwittingly paid these charges or paid all or part of these charges to avoid potential credit difficulties or interruptions in their telephone service.

86.

The actions of the Individual Defendants with respect to Sonic Class Members were part of a common scheme carried out throughout the United States from approximately early 1993 through at least February, 1995. This scheme, described in Paragraphs 78 through 85, involved over 320,000 potential Sonic Class Members, and its consequences are ongoing.

87.

The Individual Defendants have utilized interstate phone lines and/or the U.S. mails to cause LECs to switch the long distance service of Sonic Class Members throughout the United States to Sonic without their consent.

88.

In addition, Sonic, by and through the Individual Defendants, caused long distance service to be switched for Sonic Class Members throughout the United States who received, but did not cash, one or more unsolicited \$10.00 checks from Sonic, without the knowledge or consent of these Sonic Class Members.

89.

In reliance on their belief that their long distance service continued to be provided by their chosen long distance carriers, Sonic Class Members throughout the United States unknowingly continued to make long distance phone calls after the fraudulent and unauthorized switch of their long distance service to Sonic, thereby allegedly becoming liable to Sonic to pay for these unauthorized services.

90.

Sonic Class Members throughout the United States discovered the fraudulent and unauthorized switching or slamming of their long distance service upon receiving their bills from their respective LEC.

91.

As a result the fraudulent and unauthorized switching of their long distance service to Sonic by the actions of the Individual Defendants, Sonic Class Members throughout the United States were charged switching fees by their LECs, and significantly higher rates.

92.

Many of these Sonic Class Members unwittingly paid these charges or have paid all or part of these charges to avoid credit difficulties, interruptions in their telephone service, or in response to threats of late payment fees or disconnection.

93.

Sonic Class Members throughout the United States have demanded that Sonic rescind, refund and/or credit the switching fees and the fraudulent long distance charges; however, Sonic, through the Individual Defendants' actions, has refused.

94.

Sonic Class Members sustained damage to their property and economic interests as a proximate cause of the Individual Defendants' actions in effectuating the slamming of Sonic Class Members.

95.

Between March and the end of May 1993, the Florida Public Service Commission began an investigation of Sonic.

96.

Users of long distance in Florida had complained to the Commission that their long distance carriers were being switched to Sonic without their permission. The users whose long distance carriers were switched then were charged excessive long distance fees by Sonic.



97.

On April 6, 1993, Guiseppe Vitale was removed as president, secretary and treasurer of Sonic. John S. Buffa was elected President and Secretary of Sonic. Michael A. Buffa, who was no older than twenty-five at the time, was elected Vice President and Treasurer of Sonic.

98.

During the spring of 1994, Sonic consumers in California complained to governmental officials that they had been slammed by Sonic.

99.

During the fall of 1994, hundreds of Sonic consumers in Illinois and New York also complained to their respective government officials that they had been slammed by Sonic.

100.

In the fall of 1994, the California Public Service Commission instituted a formal investigation of Sonic based on consumer allegations of slamming and excessive rate charges.

101.

By the fall of 1994, the Individual Defendants, realizing that the authorities were closing in to stop their fraudulent activities, instituted several actions which, upon information and belief, were designed to result in a large and quick collection of cash at the expense of the Sonic Class members which would be dispersed to the Defendants. These steps included the practice of initiating the slamming of thousands of Sonic consumers without any pretext of obtaining authorization for the slamming through prior communications to the victims.

102.

Other steps included the incorporation in the fall of 1994 of C & B Consulting, CS Systems, DC Computing Services, MHL Consulting, JCB Marketing, Micro Consulting, Symtech and QPB. Upon information and belief, these companies were formed for the

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purposes of diverting Sonic funds to one or more of the Original Defendants and/or the Related Individual Defendants, for concealing these assets from Sonic's creditors, and for making it more difficult for Sonic funds to be traced to the Individual Defendants.

103.

From August through November, 1994, Sonic paid these and other companies owned and/or controlled by Original Buffa Defendants and Related Individual Defendants over \$600,000.

104.

On January 26, 1995, Hugo Galluzzi, who was no older than twenty-three at the time, was elected registered agent, CEO, CFO, president and secretary of Sonic.

105.

During the period from February to April, 1995, the State Attorneys General for California, Illinois, New York, and Georgia filed lawsuits against Sonic seeking injunctive relief and damages against Sonic for slamming and excessive rate charges to consumers located in their respective states.

106.

On February 9, 1995, the Illinois Attorney General obtained a temporary restraining order against Sonic enjoining it from conducting certain activities and freezing certain funds collected by the Illinois LEC on Sonic's behalf. A consent preliminary injunction order was entered on March 22, 1995. Under the terms of this order, approximately \$1 million of Sonic's corporate assets were set aside by Ameritech Illinois, the local LEC in Illinois, for restitution to Sonic's Illinois customers. These assets have been identified for administration pursuant to the Settlement with Sonic Class Members where, *inter alia*, Sonic Class Members will receive a recovery and their claims assigned to the Trustee.

107.

In February 1995, after receiving thousands of consumer complaints of slamming by Sonic, the New York Public Service Commission held a hearing to determine whether

Sonic would be able to continue doing business in New York. In late February 1995, the New York Public Service Commission revoked Sonic's license to do business in New York.

108.

In January and February 1995, near the time that actions were being taken against Sonic in Illinois and New York, several of the Original Buffa Defendants and Related Individual Defendants formed AirPulse, Brookside, L.V.C. and Southern Media Systems. Upon information and belief, these companies were also formed for the purpose of diverting Sonic funds to one or more of the Individual Defendants, and thereby concealing Sonic assets from potential creditors.

109.

On March 8, 1995, the California Attorney General obtained a preliminary injunction from a California court which enjoined Sonic's alleged slamming activities in that state and directed Sonic not to receive any further sums from LECs performing Sonic's collection and billing in California. Upon information and belief, Pacific Bell, the local LEC in California, now holds approximately \$1.4 million of Sonic's accounts receivable pending a determination as to restitution to California consumers. These assets have been identified for administration pursuant to the Settlement with Sonic Class Members where, *inter alia*, Sonic Class Members will receive a recovery and their claims assigned to the Trustee.

110.

On or about March 21, 1995, the Georgia Attorney General instituted a lawsuit in the Superior Court of Fulton County (the "Georgia Action") seeking injunctive relief and requesting the payment of restitution, penalties and costs. On March 29, 1995, the Superior Court of Fulton County entered a temporary restraining order ("Georgia TRO") against Sonic, John S. Buffa, Michael A. Buffa, Judy Ellen Buffa, and Hugo S. Galluzzi which temporarily restrained Sonic from illegally switching the long-distance services of Sonic's consumers. The Georgia TRO also froze approximately \$1.5 million of these

Defendants' assets in order to "provide for the payment of potential civil penalties and investigative costs in Georgia as well as for potential victim restitution in other states." These assets have been identified for administration pursuant to the Settlement with Sonic Class Members where, *inter alia*, Sonic Class Members will receive a recovery and their claims assigned to the Trustee

111.

On April 5, 1995, the State of New York filed a lawsuit seeking similar injunctive relief, the payment of restitution to consumers, and damages against Sonic. Upon information and belief, NYNEX Corporation and/or New York Telephone Company is currently holding approximately \$1.7 million of Sonic's assets pending the resolution of its consumers' claims and the claims of other creditors. These assets have been identified for administration pursuant to the Settlement with Sonic Class Members where, *inter alia*, Sonic Class Members will receive a recovery and their claims assigned to the Trustee

112.

In addition to the lawsuits instituted against Sonic by the Attorneys General in New York, California, Illinois, and Georgia, Sonic is also a named defendant in several class action lawsuits filed in Illinois, New York, and California (the "Class Action Lawsuits"). These lawsuits, described and concluded in the Settlement Order and Adversary Proceeding No. 95-6424, were all filed in late 1994 or early 1995.

113.

Pursuant to the terms of the Settlement Order and subject to certain conditions subsequent being met, related to final certification of the class of Sonic Class Members, numerous actions brought by the various state attorneys general will be dismissed with prejudice.

114.

Upon information and belief, shortly before the Petition Date, the Individual Defendants caused many of Sonic's written and computer business records to be destroyed or removed from the offices of Sonic without any apparent or logical explanation. Upon

information and belief, the purpose of these actions was to inhibit any investigation by the Trustee or others with respect to uncovering and tracing the fraudulent activities of the Individual Defendants.

115.

At the time of its bankruptcy petition on April 7, 1995, all of Sonic's stock was owned by John S. Buffa and his brother Michael A. Buffa. Based upon financial schedules filed by Sonic in connection with its bankruptcy, John S. Buffa owns 80% of the outstanding shares and Michael A. Buffa owns the remaining 20%.

AirPulse, Inc.

116.

After the Petition Date, most, if not all, of the individuals who worked for Sonic also became employees or independent contractors of AirPulse. Cathy Bergeron, Antonio Buffa, Graziella Buffa, Joseph Buffa, Santi Buffa, Vince Buffa, Damian Cipriani, Geri Clary, Hugo Galluzzi, Marc Lewis and John Vitale were among those Sonic employees or independent contractors who were listed on the AirPulse payroll after April 7, 1995.

America's Tele-Network Corporation

117.

One week after the Original Defendants filed their answer to the Trustee's Complaint, ATN was incorporated. ATN's president is John W. Little, former Sonic employee and Buffa family member. Upon information and belief, ATN is in the telecommunications business and received at least \$335,000 originating from Sonic to begin its operations. Like TCS, MBC, Sonic and AirPulse, most, if not all, of ATN's employees are related to John S. Buffa. Cathy Bergeron, Antonio Buffa, Graziella Buffa, Joseph Buffa, Santi Buffa, Vince Buffa, Damian Cipriani, Geri Clary, Hugo Galluzzi, Marc Lewis and John Vitale are among those former Sonic employees who received payments from ATN as employees or independent contractors.

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III. ACTS OF SPECIFIC DEFENDANTS

118.

At various material times hereto, John S. Buffa and Michael A. Buffa were officers and directors of Sonic. As officers and directors, they owed to Sonic, its creditors, and Sonic Class Members the fiduciary duties of honesty, good faith, and fair dealing.

119.

From not later than January 1991, Sonic was insolvent on a balance sheet basis.

120.

From 1992 to March 1994, Judy Ellen Buffa was a director of Sonic. As a director, Judy Buffa owed Sonic, its creditors, and Sonic Class Members the fiduciary duties of honesty, good faith and fair dealing.

121.

From approximately 1992 to April 1993, Michael R. Buffa was an officer or director of Sonic. As an officer and/or director, Michael R. Buffa owed Sonic, its creditors, and Sonic Class Members the fiduciary duties of honesty, good faith and fair dealing.

122.

At various material times hereto, Hugo Galluzzi was an officer and/or director of Sonic. As an officer and/or director, Hugo Galluzzi owed Sonic, its creditors, and Sonic Class Members the fiduciary duties of honesty, good faith and fair dealing.

123.

John S. Buffa, Michael A. Buffa, Judy Ellen Buffa, Michael R. Buffa and Hugo Galluzzi breached their fiduciary duties to Sonic, its creditors, and Sonic Class Members and knowingly engaged in a complex scheme to transfer Sonic monies to themselves, their relatives and related companies with the intent to hinder, delay and defraud Sonic's creditors and Sonic Class Members.

A. Transfers from Sonic to Defendants

124.

Sonic did not receive reasonably equivalent value for any of the transfers made or obligations incurred by Sonic with respect to each of the transactions described below or included as a subpart under the above referenced heading "Transfers from Sonic to Defendants".

1. Direct Payments to Defendants

125.

As part of Sonic's Voluntary Petition for bankruptcy relief various documents in its Statement of Financial Affairs purportedly describe certain transfers of real property and payments made by Sonic to insiders within one year preceding the Petition Date. In a declaration made under penalty of perjury, John S. Buffa swore that the information contained in Sonic's Voluntary Petition for bankruptcy relief and all attached schedules was accurate to the best of his knowledge and belief. Paragraph 10 of Sonic's Statement of Financial Affairs listed only the following information concerning transfers to insiders within the relevant period:

Transfer of Cherokee County Property

- |                  |   |  |
|------------------|---|--|
| November 7, 1994 | - | Sonic purchased 36.1 acres and eight lots (8) located in Cherokee County, Georgia from Judy Buffa. Purchase price of the said property was \$967,502.95. Sonic paid \$880,000 in cash and assumed an existing note in the amount of \$97,502.95. |
| April 4, 1995    | - | The above Cherokee property was sold for \$967,502.95 to John S. Buffa. Sonic is holder of a secured note in the amount of \$967,502.95 and an interest rate of 8%.  |

126.

Based upon the recorded deeds on the above property and the information concerning other transfers set forth in Paragraphs 127 through 131 herein, the statements in Paragraph 10 of the Statement of Financial Affairs are false. Upon information and

belief. John S. Buffa knew that these statements were false at the time he executed the Declaration referenced in Paragraph 125. Upon information and belief, John S. Buffa permitted these statements to be submitted to the Bankruptcy Court, intending to mislead the Bankruptcy Court and Sonic's creditors as to the nature of the transfers described therein.

a. Transfer of 36.1 Acres in Cherokee County ("Cherokee Property")

127.

According to the title records for Cherokee County, Timberland purchased the 36.21 acre parcel of land and eight lots ("Cherokee Property") referenced in Paragraph 10 of the Statement of Financial Affairs on July 14, 1993 from Northside Parkway Limited Partnership ("Northside") for a purchase price of \$106,600. Two weeks later, on August 2, 1993, Timberland executed a warranty deed on the Cherokee Property in favor of Judy Buffa. Judy Buffa agreed to assume responsibility for satisfying Timberland's obligation to Northside. Upon information and belief, no money or other reasonably sufficient consideration changed hands in exchange for the deed to Judy Buffa.

128.

Sonic, however, made monthly payments of \$1,944.51 to Northside for the Cherokee Property from August 1993 through at least March 1995. Upon information and belief, Sonic did not have any obligation to pay these monies on behalf of Timberland or Judy Buffa. Upon information and belief, Sonic was never reimbursed by either of these Defendants for its outlay of these monies.

129.

On November 7, 1994, while consumer complaints against Sonic were escalating, Judy Buffa purported to sell the Cherokee Property to Sonic for \$1.380 million. Upon information and belief, no legitimate survey or appraisal of this property was made prior to its sale to Sonic, and, upon information and belief, there is no basis for the purported increase in value.



130.

Upon information and belief, Judy Buffa received \$1.380 million from Sonic as "payment" for the Cherokee Property. John S. Buffa listed only \$900,000 of the \$1.380 million on Sonic's Statement of Financial Affairs. Upon information and belief, all of the checks Sonic issued for the "payment" for the Cherokee Property were made directly payable to John S. Buffa and not Judy Buffa. Upon information and belief, John S. Buffa deposited this money into a Schwab One account at Charles Schwab & Co., held in his name.

131.

On April 4, 1995, three days before the Petition Date, Sonic purportedly sold the Cherokee Property to John S. Buffa for his promise to pay \$1.924 million. Upon information and belief, Sonic did not receive any money or other reasonably equivalent value from John S. Buffa in connection with this transaction.

b. Transfers of Sonic Funds to Purchase the Horseshoe Bend Property

132.

Upon information and belief, John S. Buffa used, at least in part, the monies he received from Judy Buffa from her "sale" of the Cherokee Property, along with other funds he wrongfully obtained from Sonic, to purchase twenty-six lots in the Horseshoe Bend/Brookside Subdivision in Fulton County, Georgia (hereinafter the "Horseshoe Bend Property"). A true and correct copy of the deed purportedly conveying title to the Horseshoe Bend Property is attached hereto as Exhibit "A."

133.

On or about November 30, 1994, John S. Buffa purchased the Horseshoe Bend Property, paying a \$500,000 cash down payment and assuming a \$1,130,000 promissory note. John S. Buffa made four payments from his SchwabOne account, totaling \$1,038,870.32 and Judy Buffa made one payment of \$120,000 to satisfy the promissory note. Jody Buffa made one \$150,000 payment to satisfy the note. John S. Buffa repaid

Jody Buffa with interest with funds from his SchwabOne account. The promissory note was fully satisfied on or about March 28, 1995.

134.

Pursuant to the asset freeze authorized by the Georgia TRO, on or about March 5, 1995, John S. Buffa provided a Deed to Secure Debt to the Administrator of the Georgia Fair Business Practices Act on fourteen of the twenty-six lots in the Horseshoe Bend Property. This deed purportedly covered debts in the total aggregate amount of approximately \$1.5 million. At the time the Georgia TRO was issued, John S. Buffa claimed title to the Horseshoe Bend Property.

135.

Upon information and belief, John S. Buffa entered into a contract to sell the Horseshoe Bend Property to an entity called the Lennon Group for \$1.25 million. Upon information and belief, a sale of the property was scheduled to close on June 17, 1995, but no closure occurred.

c. Transfers of Sonic funds to Purchase Adjacent 20 Acres in Cherokee County

136.

At the direction of the Original Defendants, Sonic made similar unreimbursed outlays of funds for the purchase of 20 acres of land adjoining the Cherokee Property ("Adjacent Cherokee County Property"). On May 14, 1991, Timberland purchased the Adjacent Cherokee County Property for \$70,000. On November 24, 1992, Timberland executed a warranty deed on this property in favor of Sonic. On June 4, 1993, Sonic conveyed by warranty deed this property to Judy Buffa. No transfer tax was paid and, upon information and belief, no money or other reasonably equivalent value was given by Judy Buffa.

137.

On June 15, 1993 Michael A. Buffa directed Sonic to pay Judy Buffa \$30,538.77. Upon information and belief, Judy Buffa did not provide any goods or services to Sonic

for this payment. Upon information and belief, Judy Buffa used these monies to pay off Timberland's deed to secure debt on the Adjacent Cherokee Property.

138.

On July 22, 1993, Judy Buffa borrowed \$217,000 from Merrill Lynch Credit Corporation and secured this loan with the Adjacent Cherokee Property. Sonic made the monthly payments on the Merrill Lynch loan from at least August 1993 to at least March 1995.

139.

Upon information and belief, the transfers of real property involving Sonic, John S. Buffa, Judy Buffa, and Timberland described in Paragraphs 127 through 138 were made knowingly by the Original Defendants to enrich themselves without Sonic receiving reasonably equivalent value therefor, with the intent to deplete Sonic's assets and to hinder, delay and defraud Sonic's creditors. These transfers constitute conversion of Sonic's assets on the part of John S. Buffa, Judy Buffa and Timberland under Georgia law.

140.

Based upon the foregoing facts, John S. Buffa and Judy Buffa are holding title to the Horseshoe Bend Property and the Cherokee County Properties as trustees ex maleficio. Since the Horseshoe Bend property was purchased with the proceeds of the fraudulent conveyances described above, title to this property should be cancelled in favor of the Bankruptcy Estate and any purported sale of these properties by John S. Buffa should be prohibited.

d. Transfers of Sonic Monies to Purchase 115 Sun Moss Court

141.

On April 24, 1989 Michael A. Buffa purchased property at 115 Sun Moss Court, Roswell, Georgia, paying a cash down payment and assuming the previous owner's loan. During the period from August 1993 through December 1994, Sonic made at least ten payments of \$11,403.64 for the loan on this property without recovering reasonably equivalent value. Upon information and belief, Sonic did not have any obligation to pay

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these monies on behalf of Michael A. Buffa. Upon information and belief, Sonic was never reimbursed by Michael A. Buffa for these monies.

e. Transfers of Sonic Monies to John S. Buffa and Michael A. Buffa

i. Directors Fees Paid to John S. Buffa and Michael A. Buffa

142.

According to Sonic's Statement of Financial Affairs, filed April 4, 1995, during the period July 15, 1994 to February 9, 1995, John S. Buffa and/or Michael A. Buffa authorized Sonic's payment of \$1,235,000 to John S. Buffa for director's fees in lieu of a salary and from April 21, 1994 to January 13, 1995, authorized Sonic's payment of \$484,462.94 to Michael A. Buffa for director's fees in lieu of a salary. Sonic's By-laws expressly state that no compensation should be paid to directors. Therefore, all payments made to John S. Buffa and Michael A. Buffa as so-called director's fees were unauthorized transfers of corporate assets for personal use.

143.

In addition to the payment of the so-called director's fees listed in the Statement of Financial Affairs, Michael A. Buffa issued or directed others to issue additional checks to him from Sonic totaling at least \$104,540.75 during the period from February 1993, through March 1995. Upon information and belief, at least \$70,165.24 of the checks written to Michael A. Buffa were not payment of any legitimate debts of Sonic. Instead, these payments were undertaken with the intent to drain Sonic of its assets. Nearly all of the payments made by Sonic to Michael A. Buffa were deposited into a People's Bank of Forsyth County ("People's Bank") Advantage Checking account ("Advantage Account") in the name of his wife, Jody Buffa.

ii. Loan Repayments to John S. Buffa

144.

In addition to the payment of so-called directors' fees, John S. Buffa and/or Michael A. Buffa wrote additional checks on Sonic's accounts to John S. Buffa, totaling at least \$2,049,132.49, during the period for February 1993 through February 1995. At least

\$707,033 of these checks passed Sonic's funds to John S. Buffa or third parties on his behalf during the one-year period prior to the Petition Date. These checks state that they were "loan repayments" to John S. Buffa. However, upon information and belief, these "loans" did not represent legitimate debts of Sonic and the "repayments" thereof made during the year preceding the Petition Date, were also undertaken with the intent to bleed Sonic of its assets prior to the filing of Sonic's bankruptcy petition, constituted a breach of John Buffa's fiduciary duties to Sonic, were fraudulent transfers and constitute voidable preferences.

f. Transfers to Judy Buffa

145.

As described in Paragraph 137, on June 15, 1993, Michael A. Buffa issued a check on Sonic accounts to Judy Buffa in the amount of \$30,538.77. Upon information and belief, this payment was not payment of a legitimate debt of Sonic. Upon information and belief, Judy Buffa knew or should have known that this payment was not a legitimate debt of Sonic at the time she received it. Judy Buffa deposited this Sonic check into her checking account at Wachovia Bank of Georgia, N.A. ("Wachovia").

g. Transfers for the Purchase of 655 Waterbrook Terrace

146.

John S. Buffa issued or directed others to issue Sonic checks to pay the mortgage payments on his and Judy's personal residence at 655 Waterbrook Terrace, Roswell, Georgia. In April 1993 Sonic paid \$1,588.42 for the mortgage on this property. From May 1993 through April 1995, Sonic made at least twenty-three additional monthly payments, totaling at least \$ 18,304.97, for the mortgage on 655 Waterbrook Terrace.

147.

Upon information and belief, Sonic did not have any obligation to pay these monies on behalf of Judy and John S. Buffa and received no reasonably equivalent value for the transfers. Upon information and belief, Sonic was never reimbursed by either of these Defendants for these monies.

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h. Transfers for the Purchase of 10655 Morton Chase Way

148.

John S. Buffa's purchase of Lot 24 Morton Chase Subdivision, 10655 Morton Chase Way, was made, at least in part, with funds belonging to Sonic. In January, 1995, John S. Buffa wrote a check for \$5,000 from his SchwabOne account as payment of earnest money on this property. This account was funded entirely with monies from Sonic. Upon information and belief, John S. Buffa paid the remaining purchase price of this property with a check for \$113,810.42 from his SchwabOne account on or about February 6, 1995.

i. Transfers for the Purchase of 330 Banyon Brook Pointe

149.

Funds traceable to Sonic paid the mortgage on John S. and Judy Buffa's property at 330 Banyon Brook Pointe in the Horseshoe Bend subdivision of Roswell, Georgia. On or about April 22, 1993, John S. and Judy Buffa mortgaged 330 Banyon Brook Pointe by borrowing \$288,000 from Merrill Lynch Credit Corporation ("Merrill Lynch"). Sonic made at least twelve payments, totaling \$24,325, directly to Merrill Lynch for the mortgage on this property. On August 23, 1994, John S. Buffa directed Sonic to issue a check to him for \$160,000. Seven days later, on August 29, 1994, John S. Buffa directed Sonic to issue a second \$160,000 check to him. John S. Buffa deposited both of these checks into his SchwabOne account. On August 29, 1994, the very same day that Sonic issued the second \$160,000 check, John S. Buffa, using Sonic monies from his SchwabOne account, paid off the remaining \$289,430.14 on the Merrill Lynch loan on this property.

150.

Upon information and belief, Sonic did not have any obligation to pay these monies on behalf of Judy and John S. Buffa. Upon information and belief, Sonic was never reimbursed by either of these Defendants for its outlay of these monies.

151.

Upon information and belief, on or about July 27, 1995, Judy Buffa sold the property at 330 Banyon Brook Pointe to a third party for at least \$275,000. The payment for John S. Buffa and Judy Buffa's property at 330 Banyon Brook Pointe was made, in whole or in part, by money belonging to Sonic, thus Sonic is entitled to the proceeds of the property's sale or a first priority lien on the property superior to all other claims or claimants.

j. Transfers for the Purchase of 765 Winnmark Court

152.

On or about January 1, 1995, John S. Buffa and Judy Buffa purchased 765 Winnmark Court in the Horseshoe Bend subdivision of Roswell, Georgia. Upon information and belief, John S. Buffa paid for this property with \$695,000 from his SchwabOne account.

153.

On March 27, 1995, John S. Buffa and Judy Buffa mortgaged 765 Winnmark Court and obtained a loan from Merrill Lynch for \$780,000. The net proceeds of the \$780,000 loan from Merrill Lynch to Judy and John S. Buffa were deposited into John S. Buffa's SchwabOne account. On or about May 2, 1995, John S. Buffa transferred \$540,000 from his SchwabOne account to Marc Lewis. Upon information and belief, the \$540,000 transferred from John S. Buffa to Marc Lewis was a portion of the proceeds from the Merrill Lynch \$780,000 loan.

154.

Based upon the foregoing facts, John S. and Judy Buffa hold title to 765 Winnmark Court as trustees ex maleficio. Since this property was purchased with fraudulent transfers of Sonic monies, title to this property should be impressed with a first priority lien in favor of Sonic's estate superior to all claims or claimants.

k. Transfers for the Purchase of Lots 1 and 3 in the Tullamore Subdivision

155.

On or about November 25, 1994 Michael A. and/or Jody Buffa's purchase of Lots 1 and 3 in the Tullamore Subdivision was made, at least in part, with funds belonging to Sonic. Upon information and belief, in November 1994, Jody Buffa wrote a check for \$5,000 on her Advantage Account as payment of earnest money on this property. As described in Paragraph 143, this account was funded primarily with monies from Sonic. Upon information and belief, Jody Buffa paid the remaining purchase price of this property with a cashier's check purchased with a \$194,736 check from her Advantage Account on or about January 17, 1995.

156.

Upon information and belief, on or about September 20, 1995, Michael A. Buffa sold Lot 3 in the Tullamore Subdivision for at least \$90,000 to a third party. Upon information and belief, Michael A. and/or Jody Buffa or their agent deposit the proceeds from this sale in to Michael A. and Jody Buffa's Premier Checking account at People's Bank.

157.

Upon information and belief, on or about November 10, 1995, Michael A. Buffa sold Lot 1 in the Tullamore Subdivision for at least \$65,000 to a thirty party.

158.

As the purchase of and payment for Michael A. Buffa and Jody Buffa's property, being Lots 1 and 3 of the Tullamore subdivision was paid, in whole or in part, by money belonging to Sonic, Sonic is entitled to the proceeds of the property's sale, or to impress a first priority lien in favor of Sonic's Estate on the property superior to all other claims or claimants.

l. Transfers for the Purchase of a GMC Vandura Van

159.

Upon information and belief, John S. Buffa purchased a 1992 GMC Vandura van on or about August 30, 1992. On or about March 17, 1994, John S. Buffa issued or



directed others to issue a check for \$20,548.78 on Sonic's accounts as payment on this van. In 1994, the GMC Vandura was listed on Sonic's balance sheet.

160.

The GMC Vandura was not listed as an asset of Sonic in Sonic's bankruptcy Statement of Financial Affairs in April 1995. Further, the Trustee is not, and has never come into possession of the GMC Vandura. Upon information and belief, the title to the GMC Vandura, which was purchased in whole or in part with funds belonging to Sonic, is in John S. and/or Judy Buffa's name and in his and/or her possession.

161.

Based upon the foregoing facts, John S. and/or Judy Buffa hold title to this GMC Vandura as trustees ex maleficio. Since this automobile was purchased with Sonic monies, title to this property should be impressed with a first priority lien in favor of Sonic's Estate superior to all claims or claimants.

m. Transfers for the Purchase of a John Deere Tractor

162.

In 1993, John S. Buffa and/or Judy Buffa purchased a tractor from John Deere. Upon information and belief, John S. Buffa issued or directed others to issue twenty-two checks from Sonic, totaling at least \$34,373.30 for the lease and lease-buyout of the John Deere tractor.

163.

Upon information and belief, Sonic did not have any obligation to pay these monies on behalf of Judy and John S. Buffa. Upon information and belief, Sonic was never reimbursed by either of these Defendants for its outlay of these monies.

164.

The John Deere tractor was not listed as an asset of Sonic in Sonic's Bankruptcy Statement of Financial Affairs. Further, the Trustee is not, and has never come into possession of the John Deere tractor. Upon information and belief, the John Deere

tractor, which was purchased in whole or in part with funds belonging to Sonic, is in the possession of John S. and/or Judy Buffa.

165.

Based upon the foregoing facts, John S. and/or Judy Buffa hold title to this John Deere tractor as trustees ex maleficio. Since this property was purchased with fraudulent transfers of Sonic monies, title to this property should be impressed with a first priority lien in favor of Sonic's Estate superior to all claims or claimants.

n. Transfers for the Purchase of a Lexus

166.

In 1993, John S. Buffa and/or Judy Buffa leased a Lexus through Toyota Motor Credit Corporation. From at least June 1993 to January 1995, Sonic made at least eighteen payments, totaling at least \$15,006.60, on the lease of this Lexus.

167.

Upon information and belief, Sonic did not have any obligation to pay these monies on behalf of Judy and John S. Buffa. Upon information and belief, Sonic was never reimbursed by either of these Defendants for its outlay of these monies.

168.

The Lexus was not listed as an asset of Sonic in Sonic's Bankruptcy Statement of Financial Affairs. Further, the Trustee is not, and has never been, in possession of this automobile. Upon information and belief, this automobile, the lease for which has been paid in whole or in part with funds belonging to Sonic, is in the possession of John S. Buffa and/or Judy Buffa.

169.

Based upon the foregoing facts, John S. Buffa and/or Judy Buffa hold title to this Lexus as trustees ex maleficio. As lease payments on this property were made with fraudulent transfers of Sonic monies, either possession of this property free and clear of all liens or the equivalent of all monies paid should be returned to the Bankruptcy Estate.

o. Transfers for the Purchase of a Horse Trailer

170.

On or about January 3, 1995, Jody Buffa purchased, upon information and belief, a horse trailer with a check for \$12,785.45 drawn on her Advantage Account. As described in Paragraph 143, this account was funded primarily with monies from Sonic. Upon information and belief, Jody Buffa purchased the horse trailer for her or Michael A. Buffa's own personal use or benefit.

p. Transfers for the Purchase of an Acura NSX

171.

From March 1994 through June 1994, Michael A. and/or Jody Buffa made payments of at least \$11,350 for the purchase of an Acura NSX. Michael A. and/or Jody Buffa paid for this automobile with funds from their Premier Checking Account and Jody Buffa's Advantage Account, both of which were funded primarily with monies from Sonic. Upon information and belief Michael A. and/or Jody Buffa purchased the Acura NSX for their own personal use.

q. Transfers for the Purchase of a Truck

172.

From June 1995 through August 1995, Jody Buffa paid \$35,957.45 from her Advantage Account to Car Max. As described in Paragraph 143, this account was funded primarily with monies from Sonic. Upon information and belief Jody Buffa purchased a truck for her and/or Michael A. Buffa's personal use with these funds.

r. Transfers for the Purchase of a Motorcycle

173.

On or about March 21, 1995, Jody Buffa paid Tania Adams \$6,900 with a check drawn on her SchwabOne account. This account was funded primarily with monies traceable to Sonic. Upon information and belief Jody Buffa purchased a motorcycle for her and/or Michael A. Buffa's personal use with these funds. Since the properties described in Paragraphs 155 through 158 and Paragraphs 170 through 173 were

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purchased with fraudulent transfers of Sonic monies. title to each should be impressed with a first priority lien in favor of Sonic's Estate superior to all claims or claimants and the lien should be marked, as appropriate, on the title.

s. Transfers to Harbor Marketing

174.

John S. Buffa and/or Michael A. Buffa issued checks on Sonic accounts totaling at least \$16,000 to Harbor Marketing. Sonic made at least three of the payments to Harbor Marketing during February and March 1995. Upon information and belief, Harbor Marketing provided no goods or services to Sonic in connection with the payments received from Sonic. Upon information and belief, all of the \$16,000 paid to Harbor Marketing were deposited by or on behalf of Michael A. Buffa into Harbor Marketing's checking account at the Bank of North Georgia. Sonic's Estate is entitled to a superior lien on the account.

t. Transfers to Creditors of John S. Buffa and Michael A. Buffa

175.

Upon information and belief, John S. Buffa and/or Michael A. Buffa also used Sonic funds to make personal purchases and to pay personal expenses such as country club dues, home security costs, homeowner's association dues, and American Express, Citibank, Citicorp, and other credit card bills. Upon information and belief, Sonic did not have any obligation to pay these monies on behalf of John S. Buffa or Michael A. Buffa. Upon information and belief, Sonic was never reimbursed by either of these Defendants for its outlay of these monies. Sonic's Estate is entitled to recover from these defendants the total of all such payments.

u. Transfers of Monies to AirPulse

176.

Sonic made at least \$90,019.59 in payments to AirPulse. Sonic made at least fourteen payments to AirPulse from April 1995 through May 1995. Upon information and belief, AirPulse provided neither goods nor services in connection with the \$90,019.59 in

payments made by Sonic. Upon information and belief, once the Trustee was elected on May 24, 1995, the payments from Sonic to AirPulse ceased.

177.

Upon information and belief, Hugo Galluzzi or his agent deposited the Sonic checks to AirPulse into a business checking account in AirPulse's name at First Union National Bank of Georgia, N.A. ("First Union"). Hugo Galluzzi maintains signature authority on this account.

178.

Upon information and belief, monies from AirPulse's First Union checking account were used to pay personal debts of various named Defendants, including John S. Buffa. At least \$15,000 in payments on John S. Buffa's personal Citibank Mastercard were made with funds from the AirPulse First Union checking account. Sonic's Estate is entitled to a first priority lien on AirPulse's assets superior to all other claims or claimants. Sonic's Estate is entitled to recover the sum of the transfers described in Paragraphs 176 through 178 and to impress a superior first priority lien in favor of Sonic's Estate on assets purchased with the funds.

v. Transfers of Monies to Brookside

179.

On February 23, 1995, John S. Buffa wrote a \$10,000 check on Sonic accounts to an entity known as BCBI, Inc. ("BCBI"). John S. Buffa endorsed the check on behalf of BCBI.

180.

The Georgia Secretary of State has no listing for a corporation entitled BCBI. Upon information and belief, BCBI is an alias, alter ego or shorthand name for Brookside.

181.

On February 27, 1995, John S. Buffa issued a check on Sonic's accounts for \$150,000 to Brookside. This check was subsequently endorsed by John S. Buffa on behalf of Brookside. Upon information and belief, Brookside provided no goods or

services to Sonic in connection with the above payments. Sonic's Estate is entitled to recover the sum of the transfers described in Paragraphs 179 through 181 and to impress a superior first priority lien in favor of Sonic's Estate on assets purchased with the funds.

w. Transfers of Monies to Main Enterprises

182.

In February 1995, John S. Buffa issued a check on Sonic's accounts for \$10,000 to Main Enterprises. Upon information and belief, Main Enterprises provided no goods or services to Sonic in connection with the \$10,000 payment. Further, Sonic did not have any obligation to make this payment and was never reimbursed by any one for its outlay of these monies. Edith Anderson deposited the \$10,000 payment into Main Enterprises' checking account at NationsBank of Georgia, N.A. ("NationsBank"). Sonic's Estate is entitled to recover the sum of the transfers described in this Paragraph and to impress a superior first priority lien in favor of Sonic's Estate on assets purchased with the funds.

x. Transfers of Monies to C & B Consulting and C & S Consulting

183.

John S. Buffa and/or Michael A. Buffa wrote a number of checks on Sonic accounts to C & B Consulting totaling at least \$28,500. Sonic issued at least five checks to C & B Consulting from November 1994 through February 1995. Upon information and belief, C & B Consulting provided no goods or services to Sonic in connection with any of these payments. On October 17, 1994, John S. Buffa, on behalf of Sonic, issued a check for \$12,000 to C & S Consulting. Upon information and belief, C & S Consulting provided no goods or services to Sonic in connection with this \$12,000 payment. Cathy Bergeron deposited the Sonic checks to C & B Consulting and C & S Consulting into C & B Consulting's First Union checking account. Sonic's Estate is entitled to recover the sum of the transfers described in Paragraphs 179 through 190 and to impress a superior first priority lien in favor of Sonic's Estate on assets purchased with the funds.

y. Transfers of Monies to CS Systems and to CS Enterprises

184.

John S. Buffa and/or Michael A. Buffa wrote checks on Sonic accounts totaling at least \$40,000 to CS Systems. Sonic issued at least three checks to CS Systems from December 1994 through February 1995. One of these checks, No. 23185, states that it is for "software development." Upon information and belief, CS Systems provided no software development, or any other goods or services to Sonic in exchange for these payments.

185.

John S. Buffa and/or Michael A. Buffa wrote checks on Sonic's accounts to CS Enterprises for a total of at least \$76,000. From January 1994 through November 1994, Sonic issued at least eleven checks to CS Enterprises. Upon information and belief, neither CS Enterprises nor Martha or Joe Vitale provided any goods or services to Sonic in connection with these payments.

186.

CS Enterprises maintains a checking account at Northside Bank and Trust Company ("Northside Bank"). Signatories to that account are Martha and Joe Vitale. Upon information and belief, Joe and/or Martha Vitale or their agent deposited at least \$112,000 of the funds they received through Sonic checks made payable to CS Enterprises and CS Systems into this checking account. Upon information and belief, Joe and/or Martha Vitale or their agent deposited at least \$4,000 of the funds they received through the Sonic checks to CS Enterprises and CS Systems into a Northside Bank joint checking account held in their names. Upon information and belief, Joe and Martha Vitale used these funds to pay personal expenses and/or transferred a portion of these funds to other Defendants. Sonic's Estate is entitled to recover the sum of the transfers described in Paragraphs 184 through 186 and to impress a superior first priority lien in favor of Sonic's Estate on assets purchased with the funds.

z. Transfers of Monies to Data Tree

187.

John S. Buffa and/or Michael A. Buffa wrote checks on Sonic accounts totaling at least \$98,544 to Data Tree. Sonic issued at least thirteen checks to Data Tree from July 1994 through February 1995. Two of these checks, Nos. 23094 and 24004, state that they were allegedly payments for "consulting - software" and "computer software," respectively. Upon information and belief, neither Hugo Galluzzi nor Data Tree provided consulting, computer software, or any other goods or services to Sonic in connection with these payments.

188.

All of the payments Sonic made to DataTree were deposited into accounts in DataTree's name at First Union. The sole signatory on the Data Tree accounts is Hugo Galluzzi. Upon information and belief, Hugo Galluzzi used the funds in these accounts to pay his personal expenses and also transferred a portion of these funds to other Defendants and to other accounts upon which Hugo Galluzzi had signature authority. Sonic's Estate is entitled to recover the sum of the transfers described in Paragraphs 187 through 188 and to impress a superior first priority lien in favor of Sonic's Estate on assets purchased with the funds.

aa. Transfers of Monies to DC Computing

189.

John S. Buffa and/or Michael A. Buffa wrote checks on Sonic accounts totaling at least \$90,000 to DC Computing Services. Sonic issued at least five checks to DC Computing Services from October 1994 through February 1995. Two of these checks, Nos. 23084 and 24007, state that they are allegedly payments for "consulting software" and "computer support," respectively. Upon information and belief, neither DC Computing nor Damian Cipriani provided consulting services, computer software, or any other goods or services to Sonic in exchange for these payments.



Damian Cipriani or his agent deposited the Sonic checks issued to DC Computing in a checking account maintained in DC Computing's name at First Union. Damian Cipriani subsequently transferred funds from this account to a money market ("MM") account and a checking account at First Union held in his own name. Damian Cipriani also used the funds contained in the DC Computing and MM accounts to make at least seven payments of at least \$1,985.34 on a Bank South, N.A. ("Bank South") car loan for his Toyota 4 Runner, further described in Paragraph 191. Sonic's Estate is entitled to recover the sum of all transfers described in Paragraphs 189 through 190 and to impress a superior first priority lien in favor of Sonic's Estate on assets purchased with the funds.

bb. Transfers to Pay Debts of Damian Cipriani

191.

On or about August 19, 1994, John S. Buffa and/or Michael A. Buffa wrote a \$5,000 check on Sonic's accounts to Sandy Springs Toyota. Upon information and belief, this check was used by Damian Cipriani as a down payment for a 1994 Toyota 4 Runner which he purchased for his own use. The total purchase price for this automobile was \$33,000. Upon information and belief, Sonic did not have any obligation to pay these monies on behalf of Damian Cipriani. Upon information and belief, Sonic was never reimbursed by Damian Cipriani for this payment. The automobile was not listed as an asset of Sonic in Sonic's Bankruptcy Statement of Financial Affairs. Further, the Trustee is not, and has never been, in possession of the automobile.

192.

Based upon the foregoing facts, Damian Cipriani holds title to this automobile as trustee ex maleficio. As payments on this property were made with fraudulent transfers of Sonic monies, the title should be impressed with a first priority lien in favor of Sonic's Estate superior to all claims or claimants, the lien should be marked on the title, and possession of this property should be returned to the Bankruptcy Estate.

cc. Transfers to MHL Consulting

193.

John S. Buffa and/or Michael A. Buffa wrote at least five checks on Sonic accounts to MHL Consulting totaling at least \$89,728.67. Sonic issued five of these checks from October 1994 through February 1995. Two of these checks, Nos. 23082 and 24006, state that they were purportedly payments for "consulting - software" and "computer software." respectively. Upon information and belief, however, neither Marc Lewis nor MHL Consulting provided consulting services, computer software to Sonic, or any goods or services whatsoever to Sonic in connection with any of these payments.

194.

Marc Lewis deposited the Sonic checks to MHL Consulting in a checking account at Wachovia in the name MHL Consulting. Marc Lewis then transferred at least \$82,300 of the funds contained in the MHL Consulting account to other accounts held by him in his own name. Marc Lewis also used funds in the MHL Consulting account to make at least one payment on the mortgage on his house and to make at least one car payment.

dd. Transfers to Grateful Data

195.

John S. Buffa and/or Michael A. Buffa wrote checks on Sonic accounts totaling at least \$22,334.55 to Grateful Data. Sonic issued at least eight of these checks from January 1994 through September 1994. Upon information and belief, Sonic did not receive any goods or services whatsoever in connection with these payments to Grateful Data.

196.

Upon information and belief, Marc Lewis deposited the Sonic checks to Grateful Data in a checking account in the name of Grateful Data at Wachovia. Upon information and belief, all of the deposits made into this checking account were funds paid to Grateful Data by Sonic. Marc Lewis subsequently transferred at least \$16,000 of the funds contained in the Grateful Data account to other accounts held by Marc Lewis either in his

own name or in the name of MHL Consulting. Sonic's Estate is entitled to recover the sum of all transfers described in Paragraphs 193 through 196 and to impress a superior first priority lien in favor of Sonic's Estate on assets purchased with the funds.

ee. Transfers to JCB Marketing

197.

John S. Buffa and/or Michael A. Buffa wrote at least twenty-five checks on Sonic's accounts to JCB Marketing totaling at least \$124,835.66. Sonic issued twenty-five of these checks between January 1994 and the Petition Date. Two of these checks, Nos. 23080 and 23388, state that they are alleged payments for "consulting - software" and "software development software," respectively. Upon information and belief, however, neither Juan nor Cynthia Buffa, nor JCB Marketing provided consulting services, computer software or any other goods or services to Sonic in connection with any of the payments to JCB Marketing.

198.

Juan Buffa and/or Cynthia Buffa maintain a checking account at First Union in the name "Cynthia Buffa d/b/a JCB Marketing." Upon information and belief, Juan and/or Cynthia Buffa or their agent deposited all of the checks written to JCB Marketing into the JCB Marketing account. The Sonic deposits accounted for nearly one hundred percent of the funds deposited in the JCB Marketing account. Sonic's Estate is entitled to recover the sum of the transfers described in Paragraphs 197 through 198 and to impress a superior first priority lien in favor of Sonic's Estate on assets purchased with the funds.

ff. Transfers to GC Accounting

199.

John S. Buffa and/or Michael A. Buffa wrote checks on Sonic accounts to GC Consulting in the amount of at least \$8,500. Sonic issued at least five of these checks from October 1994 through February 1995. Upon information and belief, GC Accounting did not provide any goods or services to Sonic in consideration for these payments. Geri Clary or her agent deposited the Sonic checks to GC Accounting in a business checking

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account at First Union in GC Accounting's name. Sonic's Estate is entitled to recover the sum of the transfers described in this Paragraph and to impress a superior first priority lien in favor of Sonic's Estate on assets purchased with the funds.

gg. Transfers to L.V.C. Consulting

200.

On February 23, 1995, John S. Buffa wrote a check on Sonic accounts to L.V.C. Consulting for \$1,000. This check states on its face that the payment is purportedly for "consulting fees." Upon information and belief, however, L.V.C. Consulting provided no consulting services or any other goods or services to Sonic in connection with this payment. Sonic's Estate is entitled to recover the sum of the transfer described in this Paragraph and to impress a superior first priority lien in favor of Sonic's Estate on assets purchased with the funds.

hh. Transfers to Micro Consulting

201.

John S. Buffa and/or Michael A. Buffa wrote checks on Sonic accounts to Micro Consulting, totaling at least \$114,775. Sonic issued at least ten of these checks from January 1994 through February 1995. Two of these checks, Nos. 23083 and 24003, state that they are payments allegedly for "consulting - software" and "consulting services." Upon information and belief, however, Micro Consulting provided no software, consulting services, or any other goods or services to Sonic in connection with any of the Sonic payments.

202.

Santi Buffa or his agent deposited the Sonic checks to Micro Consulting in a checking account at Bank South in Micro Consulting's name. Upon information and belief, Sonic monies accounted for all of the deposits made into this account. Santi Buffa wrote checks on the Micro Consulting account to himself and to the following Defendants: Lisa Sutton, Hugo Galluzzi, Damian Cipriani, Vince Buffa, Michael A. Buffa, Joseph Buffa, and Michael's Windows. Sonic's Estate is entitled to recover the sum

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of all transfers described in Paragraphs 201 through 202 and to impress a superior first priority lien in favor of Sonic's Estate on assets purchased with the funds.

ii. Transfers to Personal Computing Solutions

203.

John S. Buffa and/or Michael A. Buffa wrote checks from Sonic accounts to Personal Computing Solutions totaling at least \$245,101.66. Sonic issued at least twelve of these checks from September 1994 through February 1995. Certain checks made payable to Personal Computing Solutions were endorsed by Antonio Buffa, as agent for "PC Solutions." Upon information and belief, PC Solutions, is, in fact, Personal Computing Solutions, Inc. or an alter ego of same.

204.

Two of the Sonic checks to Personal Computing Solutions, Nos. 23078 and 23188, state that they are payments allegedly for "software development" and check No. 24002 states that it is for "computer support." Upon information and belief, however, Personal Computing Solutions provided no software, consulting services, or any other goods or services whatsoever to Sonic in connection with any of the Sonic payments.

205.

Antonio or Graziella Buffa or their agent deposited the Sonic checks into all checking accounts at Wachovia, one account in the name of Personal Computing Solutions and the other account in the name of PC Solutions. At least \$156,925 of the total deposits into the Personal Computing Solutions checking account and over \$180,000 of the total the deposits into the PC Solutions checking account were made with funds belonging to Sonic. Sonic's Estate is entitled to recover the sum of all transfers described in Paragraphs 203 through 205 and to impress a superior first priority lien in favor of Sonic's Estate on assets purchased with the funds.

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jj. Transfers to Computer Madre

206.

John S. Buffa and/or Michael A. Buffa wrote checks on Sonic accounts to Computer Madre, totaling at least \$27,310.67. Sonic issued at least seven of these checks from April 1994 through September 1994. Upon information and belief, Computer Madre provided no goods or services to Sonic in connection with these payments.

207.

Vince Buffa or his agent deposited the Sonic checks to Computer Madre in a First Union checking account in Computer Madre's name. At least \$27,310.67 of the deposits into the Computer Madre account were made with funds belonging to Sonic.

kk. Transfers to QBP

208.

John S. Buffa and/or Michael A. Buffa wrote checks on Sonic accounts to QBP, totaling at least \$84,650. Sonic issued at least five of these checks between October 17, 1994 and February 23, 1995. Two of these checks, Nos. 23098 and 24005, state that they are allegedly payments for "consulting - software" and "advertising," respectively. Upon information and belief, QBP provided no consulting or advertising services, or any other goods or services to Sonic in connection with these payments.

209.

Vince Buffa deposited the Sonic checks to QBP in a checking account in the name of QBP at First Union. At least \$84,650 of the funds deposited into the QBP account were made with funds belonging to Sonic. Sonic's Estate is entitled to recover the sum of all transfers described in Paragraphs 206 through 209 and to impress a superior first priority lien in favor of Sonic's Estate on assets purchased with the funds.

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Transfers to Southern Media Systems

210.

John S. Buffa and/or Michael A. Buffa wrote checks on Sonic accounts payable to Southern Media Systems for at least \$3,000. Sonic issued at least two of these checks from January through February, 1995. These checks state that they are payments allegedly for "printing expense" or "printing expense and office supplies." Upon information and belief, Southern Media Systems provided no printing services, office supplies or any other goods or services to Sonic in connection with these payments. Sonic's Estate is entitled to recover the sum of all transfers described in this Paragraph and to impress a superior first priority lien in favor of Sonic's Estate on assets purchased with the funds.

mm. Transfers to Symtech

211.

John S. Buffa and/or Michael A. Buffa wrote checks on Sonic accounts to Symtech, totaling at least \$94,900. Sonic issued at least six of these checks from October 10, 1994 and February 23, 1995. Two of the checks, Nos. 23079 and 24008, state that they are allegedly payments for "consulting - software" and "computer support," respectively. Upon information and belief, Symtech provided no software, consulting services or any other goods or services to Sonic whatsoever in connection with these payments.

212.

Joseph Buffa or his agent deposited these Sonic checks in a checking account held in Symtech's name at First Union. Upon information and belief, all of the Sonic payments made to Symtech were deposited into the Symtech account. Joseph Buffa subsequently made payments to himself and to Michael's Windows, his father's company, from the Symtech account. Sonic's Estate is entitled to recover the sum of all transfers described in Paragraphs 211 through 212 and to impress a superior first priority lien on assets purchased with the funds.

213.

Upon information and belief, Sonic, at the direction of John S. Buffa, Michael A. Buffa, and/or Hugo Galluzzi, has made additional improper transfers to insiders during the year preceding the Petition Date and/or to others within 90 days of the Petition Date which have not yet been uncovered.

214.

Upon information and belief, the Defendants who received, deposited and/or used the Sonic checks described in Paragraphs 127 through 213 knew or should have known that Sonic had no obligation to issue these payments and that Sonic received no goods or services in connection with these payments. Upon information and belief, these Individual Defendants and their respective Defendant Family Companies knew or should have known that these checks were intended to divert Sonic funds from potential creditors.

215.

Upon information and belief, the checks issued from Sonic described in Paragraphs 127 through 213 were made with the express knowledge and consent of John S. Buffa, Michael A. Buffa, Hugo Galluzzi, Judy Buffa and/or Michael R. Buffa and with the intent to deplete Sonic's assets and to hinder, delay and defraud Sonic's creditors. Upon information and belief, payments described in Paragraphs 128 through 213 were fraudulent transfers, and may constitute voidable preferences under 11 U.S.C. § 547. Further, upon information and belief, payments described in Paragraph 174 were fraudulent transfers, and may constitute voidable preferences under 11 U.S.C. § 549.

216.

The transfers described in Paragraphs 127 through 213 above were made at a time when Sonic was insolvent by the result of such transfers, and such transfers left Sonic with unreasonably small capital to engage in its ongoing business or when Sonic intended to incur or believed that it would incur debts beyond its ability to pay as such debts ordinarily matured.



217.

Upon information and belief, John S. Buffa, Michael A. Buffa, Hugo Galluzzi, Judy Buffa and/or Michael R. Buffa breached their fiduciary duties to Sonic in issuing or causing such payments to be made to these related individuals and companies for the personal uses of the Defendants. Each such transfer constitutes conversion and/or theft of Sonic's assets under Georgia law, and is part of a pattern of acts intended to defraud the Bankruptcy Estate and Sonic's creditors.

218.

As indicated in Paragraphs 174 through 213 above, Sonic made over \$1,360,000 in payments to companies owned and/or controlled by relatives of John S. Buffa who were employees of Sonic at the time and were, upon information and belief, drawing ordinary salary at the time. During the ninety days prior to bankruptcy alone, Sonic made over \$540,000 payments to these Defendant Family Companies.

219.

At least fifteen of the Sonic checks to Defendant Family Companies, totaling \$126,000, were written on February 23, 1995, the day before the temporary suspension of Sonic's Certificate of Public Convenience and Necessity in New York and a week after Hugo Galluzzi, John S. Buffa's then-twenty-four-year old cousin, was named Chief Executive Officer, Chief Financial Officer, and Secretary of Sonic.

220.

Upon information and belief, the checks described in Paragraphs 174 through 213 above were issued to Defendant Family Companies with the intent to bleed Sonic of its assets prior to the filing of Sonic's bankruptcy petition and did not represent the payments for legitimate debts and obligations of Sonic.

2. Payment of Excessive Salaries to Insiders

a. Edith Anderson

221.

Edith Anderson began working at Sonic, at the latest, by February 1993. Upon information and belief, Edith Anderson was Sonic's bookkeeper. Upon information and belief, in January and February 1994, Edith Anderson was paid approximately \$450.00 per week, or \$11.25 per hour, as an employee of Sonic. Upon information and belief, by the end of 1994, Edith Anderson was receiving approximately \$750.00 per week, or \$18.75 per hour, as an employee of Sonic. Upon information and belief, Edith Anderson's weekly salary at Sonic in 1995 was \$754.00.

222.

In addition to her weekly salary, from January 1994 to January 1995, Edith Anderson received over \$100,000 in "bonuses." Upon information and belief, Edith Anderson did not engage in any additional activities nor did she acquire additional responsibilities which would entitle her to either the approximately sixty-six percent increase in salary from January 1994 to January 1995 or to the over \$100,000 in bonus payments that she received in addition to her salary during the period from January 1994 to January 1995.

b. Cathy Bergeron

223.

Upon information and belief, Cathy Bergeron began working at Sonic in, at the latest, 1994 when she was no older than twenty-five. Upon information and belief, Cathy Bergeron worked as a customer service representative at Sonic. Upon information and belief, Cathy Bergeron was paid approximately \$580.00 per week, or approximately \$14.50 per hour, as an employee of Sonic. Upon information and belief, Cathy Bergeron's last two paychecks were each \$100 higher than her regular salary. Upon information and belief, Cathy Bergeron did not engage in any additional activities nor did she acquire

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additional responsibilities which would entitle her to a substantial increase in her salary during the last several weeks of her employment.

c. Hugo Galluzzi

224.

Upon information and belief, Hugo Galluzzi began working at Sonic in, at the latest, 1993, when he was no older than twenty-four. Although Hugo Galluzzi purported to work in Sonic's legal department, upon information and belief, no such department existed. Upon information and belief, Hugo Galluzzi's job responsibilities as a Sonic employee primarily consisted of answering the phone and running errands. Upon information and belief, Hugo Galluzzi was paid approximately \$660.00 per week in 1994 and 1995, or \$16.50 per hour, as an employee of Sonic.

d. Damian Cipriani

225.

Upon information and belief, Damian Cipriani began working at Sonic in, at the latest, 1992 when he was no older than twenty-two. Upon information and belief, Damian Cipriani worked as a customer service representative in the sales department and/or worked in the advertising department at Sonic. Upon information and belief, Damian Cipriani was paid approximately \$650.00 per week in 1994, or \$16.25 per hour, as an employee of Sonic. Upon information and belief, based upon Sonic's records, Damian Cipriani was paid approximately \$659.20 per week in 1995 or \$16.48 per hour, as an employee of Sonic.

e. Marc Lewis

226.

Upon information and belief, Marc Lewis began working at Sonic in, at the latest, 1991. Upon information and belief, Marc Lewis worked in the mail room at Sonic. Upon information and belief in 1995, Marc Lewis' weekly salary at Sonic was approximately \$630.00, or \$15.75 per hour, as an employee of Sonic.

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f. Juan Buffa

227.

Upon information and belief, Juan Buffa began working at Sonic in, at the latest, 1993 and continued to be employed there until June 1995. Upon information and belief, Juan Buffa worked in Sonic's sales department. Upon information and belief, Juan Buffa was paid approximately \$794.00 per week, or \$19.85 per hour, as an employee of Sonic.

g. Geri Clary

228.

Upon information and belief, Geri Clary worked at Sonic in 1992 and also was an employee of Sonic from, at the latest, July 1994 to July 1995. Upon information and belief, in 1994, Geri Clary was Sonic's accountant and was paid approximately \$807.00 per week, or \$20.18 an hour, as an employee of Sonic. Upon information and belief, Geri Clary's salary rose from \$807.00 per week in January through April 7, 1995 to \$1,140.00, or \$28.50 per hour, by July 1995.

--h-- Luis Cipriani

229.

Upon information and belief, Luis Cipriani began working at Sonic in, at the latest 1995. Upon information and belief, Luis Cipriani worked in Sonic's complaint department. Upon information and belief, Luis Cipriani's weekly salary was approximately \$527.36, or \$13.18 per hour, as of January 20, 1995 and rose to approximately \$906.40 per week, or \$22.66 per hour, by the middle of June 1995. Upon information and belief, Luis Cipriani did not engage in any additional activities nor did he acquire additional responsibilities which would entitle him to a substantial increase in salary from January 1995 to June 1995.

i. Nino Buffa

230.

Upon information and belief, Nino Buffa was employed at Sonic since, at the latest, June 1993. Upon information and belief, in 1995, Nino Buffa was paid \$794.00 per week, or \$19.85 per hour, as an employee of Sonic.

j. Rosa Buffa

231.

According to Sonic's records, Rosa Buffa began working at Sonic in, at the latest, 1993. From September 1994 through at least March 1995, Rosa Buffa received \$2,000 payments every two to six weeks, totaling at least \$14,000. From May 1995 through June 1995, Rosa Buffa's weekly salary at Sonic was \$794.00 per week, or \$19.85 per hour. Upon information and belief, Rosa Buffa did not provide any goods or services to Sonic during some, if not all, of the time that she received payments from Sonic as a purported employee.

k. Santi Buffa

232.

Upon information and belief, Santi Buffa was an employee of Sonic since, at the latest, April 1993, when he was no older than twenty-seven. Upon information and belief, Santi Buffa worked in the sales department at Sonic. Upon information and belief, Santi Buffa was paid approximately \$659.20 per week, or \$16.48 per hour, as an employee of Sonic in 1994 and early 1995. In June 1995, Santi Buffa was paid from \$708.64 to \$800 per week, or \$17.72 to \$20.00 per hour. Upon information and belief, Santi Buffa did not engage in additional activities nor did he acquire additional responsibilities which would entitle him to the increase in salary that he received in June 1995.

l. Lisa Sutton

233.

Upon information and belief, Lisa Sutton was an employee of Sonic intermittently since, at the latest, October 1993, when she was no older than twenty-two. Upon

information and belief, Lisa Sutton was a receptionist at Sonic. Upon information and belief, in January 1994, Lisa Sutton was paid approximately \$265 per week. Based upon Sonic's records, Lisa Sutton's pay varied during 1994 from week to week. Nevertheless, upon information and belief, her job responsibilities did not change significantly during her employment with Sonic in 1994. Upon information and belief, while Lisa Sutton was paid \$228 for three of the four weeks in January 1995, most of her weekly paychecks in 1995 exceeded \$300 and her last two paychecks, from June 30, 1995 and July 7, 1995, were \$808, or \$20.20 per hour. Upon information and belief, Lisa Sutton did not engage in any additional activities nor did she acquire additional responsibilities which would entitle her to a substantial increase in salary from January 1995 to July 1995.

m. Antonio Buffa

234.

Upon information and belief, Antonio Buffa began working at Sonic in, at the latest, 1993. Upon information and belief, Antonio Buffa worked in the Management Information Systems Department at Sonic. Upon information and belief, in 1995, Antonio Buffa was paid approximately \$643.20 per week, or \$16.08 per hour, as an employee of Sonic. However, Antonio Buffa's salary increased to \$839.25 per week, or \$20.98 per hour, during the first two weeks of July 1995. Upon information and belief, Antonio Buffa did not engage in any additional activities, nor did he acquire additional responsibilities which would entitle him to a substantial increase in salary in July 1995.

n. Graziella Buffa

235.

Upon information and belief, Graziella Buffa began working at Sonic in, at the latest, 1993. Upon information and belief, Graziella Buffa was the Rerate Department Supervisor at Sonic. Upon information and belief, Graziella Buffa made \$18,920 in 1993 as an employee of Sonic. Upon information and belief, in 1994, Graziella Buffa's weekly salary at Sonic was initially approximately \$550 and rose to approximately \$643.20 per week, or approximately \$16.08 per hour, after mid-April 1994.

o. Vince Buffa

236.

Upon information and belief, Vince Buffa began working at Sonic, in, at the latest, 1993. Upon information and belief, Vince Buffa worked in the sales department at Sonic. Upon information and belief, Vince Buffa's salary at Sonic varied from week to week. In 1995, Vince Buffa's salary ranged from \$410.80 per week to \$1,153.60 per week. Upon information and belief, Vince Buffa did not engage in any additional activities, nor did he acquire additional job responsibilities which would entitle him to receive a substantial increase in salary during 1995.

p. John Vitale

237.

Upon information and belief, John Vitale began working at Sonic in, at the latest, December, 1994. John Vitale purportedly worked as Sonic's Print Manager. Upon information and belief, John Vitale was paid approximately \$615.20 per week, or \$15.38 per hour, as an employee of Sonic.

q. Joseph Buffa

238.

Upon information and belief, Joseph Buffa began working at Sonic in, at the latest, November 1992 when he was no older than twenty-four. Upon information and belief, Joseph Buffa worked as a System Designer at Sonic. Upon information and belief in 1995, Joseph Buffa was paid approximately \$717.00 per week, or \$17.92 per hour, as an employee of Sonic. Upon information and belief, Joseph Buffa's paychecks in late June and early July 1995 were at least \$200 higher than his regular salary. Upon information and belief, Joseph Buffa did not engage in any additional activities nor did he acquire additional responsibilities which would entitle him to a substantial increase in his salary in June and July 1995.

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r. Martha Vitale

239.

Martha Vitale has been an employee of Sonic since, at the latest, November 1992. Upon information and belief, Martha Vitale was Sonic's Operations Manager. Upon information and belief, in 1994 and 1995, Martha Vitale was paid approximately \$794.00 per week, or \$19.85 per hour, as an employee of Sonic.

240.

Upon information and belief, all of the Sonic employees listed above ("Defendant Employees") received, for some or all of the time that they were employees of Sonic, salaries which were excessive, in that they far exceeded any reasonable salary paid to individuals with similar skills and experience, for the jobs that they held. The weekly paychecks paid to the Defendant Employees were also not commensurate with the duties and responsibilities, if any, which they were obligated to perform as employees of Sonic.

241.

In contrast, Giovanni Nobile, Supervisor of the MIS department at Sonic, who had specialized expertise and significant work-related experience regarding computers and computer programming which, upon information and belief, exceeded that of any other Sonic employee, was paid \$500.00 per week, or \$12.50 per hour, less than that paid to Marc Lewis, who worked in Sonic's mail room.

242.

Upon information and belief, the excessive weekly paychecks paid to the Defendant Employees were made with the express knowledge and consent of John S. Buffa, Michael A. Buffa, Hugo Galluzzi, Judy Buffa, and/or Michael R. Buffa, and with the intent to deplete Sonic's assets and to hinder, delay and defraud Sonic's creditors. Furthermore, Sonic did not receive reasonably equivalent value for these transfers. Upon information and belief, the payments described in Paragraphs 221 to 240 were fraudulent transfers. Further, upon information and belief, these payments may constitute voidable preferences under 11 U.S.C. § 547.



Upon information and belief, John S. Buffa and Michael A. Buffa breached their fiduciary duties to Sonic in issuing or causing these excessive payments to be made to the Defendant Employees. Each such excessive payment constitutes conversion and/or theft of Sonic's assets under Georgia law, and is part of a pattern of acts intended to defraud the Bankruptcy Estate and Sonic's creditors.

**B. Transfers Between Defendants to Hide Assets of the Estate**

1. Direct Transfers Between the Various Defendants

a. Transfers of Funds Between Jody Buffa and Michael Buffa

244.

Jody Buffa regularly transferred funds from her Advantage Account to her husband Michael A. Buffa, writing checks totaling at least \$18,700 during May 1995. Michael A. Buffa or his agent deposited these checks in a Premier Checking Account at People's Bank which he held jointly with Jody Buffa.

b. Transfers of Funds Between Jody Buffa and Crabapple Beverage

245.

From May 1995 through July 1995, Jody Buffa transferred at least \$15,000 from her Advantage Account to an Advantage Account at People's Bank in the name of Crabapple Beverage. Upon information and belief, Jody and/or Michael A. Buffa used some, if not all, of the funds in the Crabapple Beverage account for their own personal uses.

c. Transfers of Funds Between Jody Buffa and John S. Buffa

246.

In April 1995, John S. Buffa wrote a \$150,190 check from his SchwabOne account to Jody Buffa. On or about April 4, 1995, Jody Buffa or her agent deposited this check in a SchwabOne account held in her name.

d. Transfers of Funds Between Edith Anderson and Main Enterprises

247.

From February 1995 through May 1995, Edith Anderson wrote checks from Main Enterprises' NationsBank account to herself totaling at least \$9,500. Edith Anderson or her agent deposited these monies to a checking account at NationsBank held in her name.

e. Transfers From Data Tree and Hugo Galluzzi to C & B Consulting and Cathy Bergeron

248.

Of the Sonic monies transferred to Data Tree referenced in Paragraph 187, Hugo Galluzzi d/b/a Data Tree and Data Tree issued checks totaling at least \$25,000 to C & B Consulting during the period from January 1995 through March 1995. Cathy Bergeron or her agent deposited these monies into C & B Consulting's First Union checking account.

249.

Of the Sonic monies transferred to Data Tree referenced in Paragraph 187, Hugo Galluzzi d/b/a Data Tree and Data Tree also issued checks totaling at least \$6,600 to Cathy Bergeron directly. From January to March 1995, Cathy Bergeron or her agent deposited at least \$6,200 of these monies into her flat fee checking account ("Flat Fee account") at First Union.

f. Transfers From Data Tree and Hugo Galluzzi to C & B Consulting and Cathy Bergeron

250.

On or about November 16, 1994, C & B Consulting issued a check for \$650 to Data Tree. From May 1995 through July 1995, C & B Consulting issued checks for at least another \$8,650 to Hugo Galluzzi. Upon information and belief, Hugo Galluzzi used these funds for his own personal uses.

g. Transfers of Funds From C & B Consulting To Cathy and Sylvain Bergeron

251.

Between October 1994 and December 1994, C & B Consulting wrote checks totaling at least \$1,900 to Sylvain Bergeron. Upon information and belief, Sylvain Bergeron used these monies for his own purposes.

252.

From November 1994 through December 1994, C & B Consulting issued checks totaling at least \$4,000 to Cathy Bergeron. Cathy Bergeron or her agent deposited these monies into her Flat Fee account.

h. Transfers of Funds From DC Computing to Damian Cipriani

253.

From October 1994 through May 1995, DC Computing issued checks totalling at least \$69,000 to Damian Cipriani. Damian Cipriani or his agent deposited these checks into personal accounts held in his own name at First Union.

i. Transfers of Funds Between Damian Cipriani and Micro Consulting

254.

From January through May 1994 Micro Consulting issued checks totaling at least \$6,963 to Damian Cipriani. Damian Cipriani or his agent deposited these checks into a First Union No Minimum/Organized Checking account ("Organized Checking account") which he held in his own name.

j. Transfers of Funds From Data Tree to Damian Cipriani

255.

From June through September 1994, Data Tree issued checks totaling at least \$10,916 to Damian Cipriani. Damian Cipriani or his agent deposited these monies into his Organized Checking account.

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k. Transfers of Funds Between Data Tree and Hugo Galluzzi

256.

From June 1994 through March 1995, Data Tree issued checks totaling at least \$46,250 to Hugo Galluzzi. On or about March 2, 1995, Hugo Galluzzi transferred at least \$21,868.99 of these funds from the Data Tree checking account at First Union into the Hugo Galluzzi d/b/a Data Tree CAP account at the same bank.

l. Transfers of Funds From Data Tree to Joseph Buffa

257.

From June through September 1994, Data Tree issued checks totaling at least \$15,765.50 to Joseph Buffa. On or about August 22, 1994, Joseph Buffa or his agent deposited at least \$4,000 of these funds into the First Union Personal Savings Account he holds jointly with Rachael Buffa. Between June and September 1994, Joseph Buffa deposited at least \$11,665.50 of these funds into his Organized Checking account at First Union.

m. Transfers of Funds from Symtech to Joseph Buffa

258.

From October 1994 through July 1995, Symtech issued checks totaling at least \$26,500 to Joseph Buffa. Between October 1994 and April 1995, Joseph Buffa or his agent deposited at least \$16,400 of these funds to his Organized Checking account. Between June and July 1995, Joseph Buffa or his agent deposited at least \$3,900 of these Symtech checks in his and Rachael's Flat Fee account at First Union.

n. Transfers of Funds From Symtech to Rachael Buffa

259.

From December 1994 through June 1995, Symtech issued checks totaling at least \$4,000 to Rachael Buffa. Upon information and belief, Rachael Buffa used these monies for her own personal uses.

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o. Transfers of Funds From Symtech to Michael's Windows

260.

From October 1994 through January 1995, Symtech issued checks totaling at least \$17,000 to Michael's Windows. Upon information and belief, neither Michael R. Buffa nor Michael's Windows provided any goods or services to Symtech which would warrant receiving the \$17,000 payment from Symtech.

p. Transfers of Funds From JCB Marketing to Angie Buffa

261.

From July 1994 through May 1995, JCB Marketing issued checks totaling at least \$1,900 to Angie Buffa. At least \$1,900 of these funds were deposited in a custodial account which Juan and Cynthia Buffa maintain for the benefit of Angie Buffa at First Union.

q. Transfers of Funds From Micro Consulting to Lisa Sutton

262.

From February 1994 through April 1995, Micro Consulting issued checks totaling at least \$21,994.79 to Lisa Sutton. Lisa Sutton or her agent deposited at least \$4,100 of these funds into her Flat Fee Account at Wachovia. Lisa Sutton or her agent deposited at least \$5,500 in these funds into her Personal Savings Account at First Union. Lisa Sutton or her agent also deposited at least \$9,000 of these funds into her MM Account at First Union. Lisa Sutton or her agent deposited at least \$1,375 of these funds into her CAP Account at First Union.

r. Transfers of Funds From Damian Cipriani to Lisa Sutton

263.

From November 1994 through March 1995, Damian Cipriani issued checks totaling at least \$2,436 to Lisa Sutton. Lisa Sutton or her agent deposited at least \$2,436 of these funds into her Checking Account.

s. Transfers of Funds From Data Tree to Lisa Sutton

264.

From July through September 1994, Data Tree issued checks totaling over \$13,880 to Lisa Sutton. Lisa Sutton deposited at least \$7,880 of these funds into her Checking Account. On or about September 20, 1994, Lisa Sutton or her agent deposited \$4,000 of these funds into her Savings Account.

t. Transfers of Funds From JCB Marketing to Lisa Sutton

265.

By December 1994, JCB Marketing had issued checks totaling at least \$1,500 to Lisa Sutton. On or about December 1, 1994, Lisa Sutton or her agent deposited at least \$1,500 of these funds into her MM Account.

u. Transfers of Funds From Santi Buffa to Lisa Sutton

266.

Prior to their marriage, from March through July 1995, Santi Buffa issued checks totaling at least \$9,175 to Lisa Sutton. Lisa Sutton or her agent deposited at least \$8,500 of these funds into her CAP Account.

v. Transfers of Funds From Grateful Data and MHL Consulting to Marc Lewis

267.

From January through September 1994, Grateful Data issued checks totaling at least \$18,000 to Marc Lewis. During September 1994, Marc Lewis or his agent deposited at least \$5,000 of these funds into his Maximum Advantage Investment Account ("Advantage Account") at Southtrust Bank of Georgia, Inc. Between January and September 1994, Marc Lewis or his agent deposited at least \$13,000 of these funds into his Southtrust Regular Checking Account ("Checking Account").

268.

From October 1994 through March 1995, MHL Consulting issued checks totaling at least \$82,300 to Marc Lewis. Marc Lewis or his agent deposited at least \$4,400 of

these funds into his checking account. During December 1994, Marc Lewis deposited at least \$77,400 of these funds into his Advantage Account.

w. Transfers of Funds From John S. Buffa to Marc Lewis

269.

From April through May 1995, John S. Buffa issued checks totaling at least \$550,000 from his SchwabOne account to Marc Lewis. Marc Lewis or his agent deposited these funds into a SchwabOne account held in his name. Upon information and belief, at least \$540,000 of these funds were proceeds from the mortgage taken on 765 Winnmark Court.

x. Transfers of Funds From Marc Lewis to Judy Buffa

270.

In June 1995, Marc Lewis issued checks totaling at least \$10,000 to Judy Buffa. Upon information and belief, Judy Buffa or her agent deposited at least \$10,000 of these funds into her MM Account at Wachovia.

y. Transfers of Funds From CS Enterprises to Joe and Martha Vitale

271.

From March through November 1994, CS Enterprises issued checks totaling at least \$3,500 to Joe and Martha Vitale. Joe or Martha Vitale or their agent deposited at least \$3,500 of these funds into their checking account at Northside Bank.

z. Transfers of Funds From Michael A. Buffa to Nino Buffa

272.

From April 1994 through August 1995, Michael A. Buffa issued checks totaling at least \$4,844.10 from his Premier Checking Account to Nino Buffa. Upon information and belief, Nino Buffa used these funds for his own personal uses.

aa. Transfers of Funds From Micro Consulting to Michael A. Buffa

273.

In April 1994, Micro Consulting issued a check totaling \$1,500 to Michael A. Buffa. On or about April 27, 1994, Michael A. Buffa deposited this check into his Premier Checking Account.

bb. Transfers of Funds From Jody Buffa to Michael A. Buffa

274.

In March 1995, Jody Buffa transferred at least \$6,000 from her SchwabOne account to Michael A. Buffa. Upon information and belief, Michael A. Buffa used these funds for his own personal uses.

275.

From February 1994 through May 1995, Jody Buffa wrote checks totaling at least \$34,300 from her Advantage Account to the Premier Checking Account she holds jointly with Michael A. Buffa. Upon information and belief, Jody Buffa transferred these funds to the Premier Checking Account for the benefit of Michael A. Buffa.

cc. Transfers of Funds From Harbor Marketing to Jody Buffa

276.

In March 1995, Harbor Marketing issued checks totaling at least \$8,000 to Jody Buffa. Jody Buffa or her agent deposited at least \$8,000 of these funds into her Advantage Account.

dd. Transfers of Funds From Personal Computing Solutions to Nino Buffa

277.

From April through September 1994, Personal Computing Solutions issued checks totaling at least \$19,084.28 to Nino Buffa. Nino Buffa deposited at least \$4,764 of these funds into his Premier Checking Account at People's Bank.



ee. Transfers of Funds From Personal Computing Solutions to Antonio and Graziella Buffa

278.

From November, 1994 through July 1995, Personal Computing Solutions a/k/a PC Solutions issued checks totaling at least \$71,000 to Antonio and/or Graziella Buffa. From February 1994 through April 1995, Antonio or Graziella Buffa or their agent deposited at least \$19,000 of these funds into their Joint Checking Account at Wachovia. On or about July 25, 1995, Antonio or Graziella Buffa or their agent deposited at least \$52,000 of these funds into their Premier MM Account at Wachovia.

279.

From February through November 1994, Personal Computing Solutions issued checks totaling at least \$6,800 to Antonio and/or Graziella Buffa. Antonio or Graziella Buffa or their agent deposited at least \$6,800 of these funds into their Joint Checking Account.

ff. Transfers from Micro Consulting to Joseph Buffa

280.

From January through May 1994, Micro Consulting issued checks totaling at least \$9,963 to Joseph Buffa. Between January and March 1994, Joseph Buffa or his agent deposited at least \$2,869 of these funds into his Organized Checking Account. Between March and April 1994, Joseph Buffa or his agent deposited at least \$3,519 of these funds into his Personal Savings Account.

gg. Transfers from Micro Consulting to Santi Buffa

281.

From January 1994 through June 1995, Micro Consulting issued checks totaling at least \$31,388 to Santi Buffa. Between November 1994 and March 1995, Santi Buffa or his agent deposited at least \$29,000 of these funds into his MM Account at Bank South.

hh. Transfers from Micro Consulting to Vince Buffa

282.

From February through March 1994, Micro Consulting issued checks totaling at least \$1,775 to Vince Buffa. On or about March 1, 1994, Vince Buffa deposited at least \$275 of these funds into his checking account at First Union.

ii. Transfers from Micro Consulting to Damian Cipriani

283.

From January through May 1994, Micro Consulting issued checks totaling at least \$6,963 to Damian Cipriani. Between January 1994 and April 1994, Damian Cipriani deposited at least \$6,953 of these funds into his Organized Checking Account.

jj. Transfers from Micro Consulting to Hugo Galluzzi

284.

From January through April 1994, Micro Consulting issued checks totaling at least \$6,994 to Hugo Galluzzi. Upon information and belief, Hugo Galluzzi used these funds for his own personal uses.

kk. Transfers from Micro Consulting to Lisa Sutton

285.

From October 1994 through April 1995, Micro Consulting issued checks totaling at least \$21,994 to Lisa Sutton. Between January 1994 and April 1995, Lisa Sutton deposited at least \$19,994 of these funds into her Checking Account, Savings Account and CAP Account.

ll. Transfers from Micro Consulting to Michael's Windows

286.

From November 1994 through January 1995, Micro Consulting issued checks totaling at least \$7,000 to Michael's Windows.

mm. Transfers of Funds from QBP to Vince Buffa

287.

From October 1994 through June 1995, QBP issued checks totaling at least \$37,898 to Vince Buffa. Vince Buffa or his agent deposited at least \$19,320 of these funds into his First Union Checking Account.

nn. Transfers of Funds from Computer Madre to Vince Buffa

288.

From May through October 1994, Computer Madre issued checks totaling at least \$14,600 to Vince Buffa. Vince Buffa or his agent deposited at least \$8,800 of these funds into his Checking Account.

oo. Transfers of Funds from Computer Madre to Hugo Galluzzi

289.

In June 1994, Computer Madre issued checks totaling at least \$2,000 to Hugo Galluzzi. Upon information and belief, Hugo Galluzzi used these funds for his own personal uses.

pp. Transfers of Funds from Computer Madre to Joseph Buffa

290.

In June 1994, Computer Madre issued checks totaling at least \$1,900 to Joseph Buffa. Joseph Buffa or his agent deposited at least \$1,850 of these funds into his Organized Checking Account.

qq. Transfers of Funds from Computer Madre to Damian Cipriani

291.

In June 1994, Computer Madre issued checks totaling at least \$2,000 to Damian Cipriani. Upon information and belief, Damian Cipriani used these funds for his own personal uses.

rr. Transfers of Funds from Computer Madre to Santi Buffa

292.

On or about May 31, 1995, Computer Madre issued checks totaling at least \$500 to Santi Buffa. Upon information and belief, Santi Buffa used these funds for his own personal uses.

ss. Transfers of Funds from Computer Madre to Antonio Buffa

293.

From July through September 1994, Computer Madre issued checks totaling at least \$700 to Antonio Buffa. Upon information and belief, Antonio Buffa used these funds for his own personal uses.

tt. Transfers of Funds from Various Defendants to ATN

294.

In July 1995, AirPulse issued a check for \$5,000 to ATN. ATN used these funds to open its Commercial Checking Account ("Commercial Account") at First Union.

295.

In September 1995, Judy Buffa transferred \$185,000 from the sale of 330 Banyon Brook Pointe to ATN. ATN deposited these funds into the ATN Commercial Account.

296.

In August 1995, John S. Buffa transferred \$150,000 from his SchwabOne account to ATN. ATN deposited these funds into the ATN Commercial Account.

297.

Upon information and belief, the Individual Defendants and the Defendant Family Companies have made additional transfers between and among themselves during the year preceding the Petition Date or within 90 days of the Petition Date which have not yet been uncovered.

298.

Upon information and belief, the transfers between and among the Defendants were not in connection with any legitimate debts on behalf of these Defendants. Upon

information and belief, none of those Defendants who issued checks described in Paragraphs 244 through 296 received goods or services in connection with these payments. All such payments were made while Sonic was insolvent based on a balance sheet test. Upon information and belief, all of the Defendants receiving these checks knew or should have known that no goods or services had been provided in connection with these payments. All of the transfers described in Paragraphs 244 through 296 are traceable to funds wrongfully paid by Sonic to the various Defendants. Upon information and belief, these Individual Defendants and their respective Defendant Family Companies made these transfers intending to hinder the Trustee and Sonic's creditors in tracing Sonic funds. Sonic did not receive directly or indirectly reasonably equivalent value for these transfers. The Trustee is entitled to a constructive trust on the total sum of all transfers as described in Paragraphs 244 through 296.

2. Transfers from Defendant Family Companies to Third Parties for the Benefit of Various Individual Defendants
  - a. Payments by Personal Computing Solutions for Antonio and Graziella Buffa

299.

On or about October 28, 1994, Antonio and/or Graziella Buffa made the \$50,000 down payment on the property at 210 Piney Hill Court, Alpharetta, Georgia with a check written on Personal Computing Solutions' Checking Account. In June and July 1995, Antonio and/or Graziella Buffa made at least two payments, totaling at least \$2,252, on the mortgage on this property with checks written on PC Solutions' Checking Accounts.

- b. Payments by C & B Consulting for Cathy and Sylvain Bergeron

300.

On or about January 13, 1995, Cathy Bergeron wrote a \$3,000 check from the C & B Consulting Checking Account as earnest money for the purchase of property at 320 Cotton Court, Alpharetta, Georgia. On or about February 23, 1995, C & B Consulting made a \$16,000 transfer from its Checking Account for, upon information and

belief, the down payment on this property. In addition, C & B Consulting also made at least one \$949 payment on the mortgage on this property.

301.

Upon information and belief, Cathy Bergeron, through C & B Consulting, made other personal purchases for the benefit of herself and/or her husband Sylvain Bergeron. On or about January 4, 1995, C & B Consulting paid Brown & Co. Jewelry at least \$900.

c. Payments by DC Computing for Damian Cipriani

302.

Between March and April 1995, DC Computing made at least two payments, totaling at least \$2,292 on Damian Cipriani's home at 275 Brandenburg Circle, Roswell, Georgia. On or about February 14, 1995, Damian Cipriani had used monies transferred to him from DC Computing to make a \$55,101.83 down payment on this property.

d. Payments by Data Tree for Hugo Galluzzi

303.

Hugo Galluzzi made various personal purchases with monies from Data Tree's Checking and CAP Accounts. Between September 1994 and March 1995, Data Tree made Hugo Galluzzi's monthly rent payments, totaling at least \$3,200. Between September 1994 and March 1995, Data Tree made payments for Hugo Galluzzi's dental bills, telephone bills, cable service and renter's insurance.

e. Payments by Symtech for Joseph and Rachael Buffa

304.

Between November 1994 and June 1995, Joseph and Rachael Buffa, through Symtech, made at least eight payments totaling at least \$6,158 on Joseph and Rachael Buffa's mortgage on the property at 10755 Willow Meadow Circle, Roswell, Georgia.

305.

On or about November 4, 1994, Symtech made a \$4,006 payment, upon information and belief, for the lease or purchase of a Porsche for Joseph and/or Rachael Buffa's personal use. Between December 1994 and June 1995, Symtech made at least

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seven payments, totaling at least \$3,745.70 for car payments, which, upon information and belief, was in connection with the lease or purchase of this Porsche.

306.

Joseph and/or Rachael Buffa made other personal purchases with monies from the Symtech Checking Account. On or about November 29, 1994, Joseph and/or Rachael Buffa made a purchase from Carpets of Dalton, for at least \$1,559.58, with funds from the Symtech Checking Account. On or about December 7, 1994, Symtech made a \$620 payment to Midtown Music for studio equipment for Joseph and/or Rachael's use.

f. Payments by Grateful Data and MHL Consulting for Marc Lewis

307.

In March 1995, MHL Consulting made at least one payment of \$935.34 on Marc Lewis' mortgage on 9395 BJPA, Roswell, Georgia. On or about November 29, 1994, Marc Lewis used funds transferred to him from Grateful Data and MHL Consulting to make a \$43,906 down payment on this property.

308.

Marc Lewis made other personal purchases with monies from the MHL Consulting Checking Account. On or about January 23, 1995, Marc Lewis made a \$2,000 payment to Citibank Visa with funds from the MHL Consulting checking account. Between January 1995 through March 1995, MHL Consulting also made payments for Marc Lewis to Southern Bell, BP Oil and Sawnee Electric.

g. Payments by Micro Consulting for Santi Buffa

309.

Between October 1994 and February 1995, Santi Buffa made at least four payments, totaling at least \$3,075.36 on the mortgage on 125 Plantation Court, Alpharetta, Georgia with funds from the Micro Consulting Checking Account.

310.

Santi Buffa made other personal purchases with funds from the Micro Consulting checking account. On or about January 31, 1995, Santi Buffa made a \$2,597 payment to

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Maier & Berkele with monies from this account. Between October 1994 and January 1995, Micro Consulting also made payments on behalf of Santi Buffa to Kroger, Home Depot, Atlanta Gas and Southern Bell.

h. Payments by QBP for Vince Buffa

311.

On or about October 21, 1994, Vince Buffa made a payment of \$7,000 to Roswell Mazda with funds from the QBP checking account. Upon information and belief, this payment was for the purchase of an automobile for Vince Buffa's own personal use.

312.

Vince Buffa made other personal purchases with funds from the QBP checking account. On or about November 15, 1994, Vince Buffa made a payment of at least \$2,700 for the purchase of a guitar with funds from the QBP checking account. In addition, on or about December 28, 1994, Vince Buffa made a \$1,432.59 payment to the jewelry store Maier & Berkele.

313.

Upon information and belief, the Defendant Family Companies have made additional payments on behalf of the Individual Defendants some of which were made during the year preceding the Petition Date within 90 days of the Petition Date which have not yet been uncovered.

314.

Upon information and belief, the payments made by the Defendant Family Companies for the benefit of various Individual Defendants were not in connection with any legitimate obligations on behalf of the Defendant Family Companies. All of the payments described in Paragraphs 244 to 312 are traceable to funds wrongfully paid by Sonic to various Defendants. Upon information and belief, all the transfers were made with the intention of defrauding Sonic's creditors. Title to all property purchased should be impressed with a first priority lien in favor of Sonic's Estate superior to all claims or claimants.



COUNT I  
(TURNOVER PURSUANT TO 11 U.S.C. §§ 542, 543)  
(ALL DEFENDANTS)

315.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 314 above as if fully set forth herein verbatim.

316.

Defendants have possession, custody and/or control of real and personal property and/or the proceeds thereof belonging to the Estate and which can be used, sold or leased by the Trustee in accordance with 11 U.S.C. § 363. The property is not of inconsequential benefit to the Estate. The Trustee is entitled to immediate possession of said property and/or the proceeds thereof.

317.

Demand was made upon the Original Defendants for the surrender of such property and/or the proceeds thereof in the Trustee's original Verified Complaint. The Original Defendants have refused to respond to this demand.

318.

Demand is hereby made on the remaining Defendants to surrender the property described above and/or the proceeds thereof.

319.

The Trustee is therefore entitled to an order directing the Defendants to turn over and surrender to the Trustee the properties and/or proceeds thereof described in Paragraphs 127 through 313 above, pursuant to 11 U.S.C. § 542 and 543.

COUNT II  
(INJUNCTIVE RELIEF)  
(ALL DEFENDANTS)

320.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 319 above as if fully set forth herein verbatim.

321.

Upon information and belief, John S. Buffa intends to sell all or a portion of the Horseshoe Bend property. Upon information and belief, a sale of this property was scheduled for June 17, 1995, but has been postponed.

322.

Since the Horseshoe Bend property was purchased with proceeds of the fraudulent conveyances described in Paragraphs 132 through 135 above, immediate and irreparable injury, loss or damage will result to the Estate if these properties are sold or otherwise transferred before notice can be served and a hearing had on an application for a preliminary injunction.

323.

The Trustee is therefore entitled to an order temporarily restraining and enjoining John S. Buffa from selling, transferring, or conveying any right, title or interest in the Horseshoe Bend property until a hearing on a preliminary injunction may be held or until a determination is made by this Court as to whether such property constitutes an asset of the Estate, whichever occurs first.

324.

The Trustee is also entitled to a temporary restraining order enjoining John S. Buffa and Judy Buffa from selling, transferring or otherwise conveying any right, title or interest in the Cherokee County properties, or any other properties in which they claim title or an interest until a hearing on a preliminary injunction may be held or until a determination is made by this Court as to whether such property constitutes an asset of the Estate, whichever occurs first.

325.

Since the following properties were purchased in whole or in part by John S. Buffa and Judy Buffa with proceeds of the fraudulent conveyances described in Paragraphs 127 through 154 and Paragraphs 159 through 168 above, immediate and irreparable injury, loss

or damage will result to the Estate if these properties are sold or transferred before notice can be served and a hearing had on an application for a preliminary injunction:

- (a) Lot 24, Morton Chase Subdivision, 10655 Morton Chase Way;
- (b) 765 Winnmark Court;
- (c) 655 Waterbrook Terrace;
- (d) 1992 GMC Vandura Van;
- (e) John Deere Tractor; and
- (f) Lexus.

326.

The Trustee is therefore entitled to an order temporarily enjoining John S. Buffa and Judy Buffa from selling, transferring, or conveying any right, title or interest in these properties until a hearing on a preliminary injunction may be held or until a determination is made by this Court as to whether such property constitutes an asset of the Estate, whichever occurs first.

327.

Since the following properties were purchased in whole or in part by Michael A. Buffa and Jody Buffa with proceeds of the fraudulent conveyances described in Paragraphs 141 through 173 above, immediate and irreparable injury, loss or damage will result to the Estate if these properties are sold or transferred before notice can be served and a hearing had on an application for a preliminary injunction:

- (a) 115 Sun Moss Court;
- (b) Acura NSX;
- (c) Truck;
- (d) Horse Trailer;
- (e) Motorcycle.

328.

The Trustee is therefore entitled to an order temporarily enjoining Michael A. Buffa and Jody Buffa from selling, transferring, or conveying any right, title or interest in

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these properties until a hearing on a preliminary injunction may be held or until a determination is made by this Court as to whether such property constitutes an asset of the Estate, whichever occurs first.

329.

Since the property at 210 Piney Hill Court was purchased in whole or in part with proceeds of the fraudulent conveyances described in Paragraph 300 above, immediate and irreparable injury, loss or damage will result to the Estate if these properties are sold or transferred before notice can be served and a hearing had on an application for a preliminary injunction.

330.

The Trustee is therefore entitled to an order temporarily restraining and enjoining Antonio Buffa and Graziella Buffa from selling, transferring, or conveying any right, title or interest in the property at 210 Piney Hill Court until a hearing on a preliminary injunction may be held or until a determination is made by this Court as to whether such property constitutes an asset of the Estate, whichever occurs first.

331.

Since the following properties were purchased in whole or in part by Damian Cipriani with proceeds of the fraudulent conveyances described in Paragraphs 191 through 192 and 302 above, unless temporarily restrained from doing so, immediate and irreparable injury, loss or damage will result to the Estate if these properties are sold or transferred before notice can be served and a hearing had on an application for a preliminary injunction:

- (a) 275 Brandenburg Circle; and
- (b) 1994 Toyota 4 Runner.

332.

The Trustee is therefore entitled to an order temporarily enjoining Damian Cipriani from selling, transferring, or conveying any right, title or interest in the property at 275 Brandenburg Circle or the 1994 Toyota 4 Runner until a hearing on a preliminary

injunction may be held or until a determination is made by this Court as to whether such property constitutes an asset of the Estate, whichever occurs first.

333.

Since the property at 9395 Martin Road was purchased by Marc Lewis in whole or in part with proceeds of the fraudulent conveyances described in Paragraphs 193 through 196 above, unless temporarily restrained from doing so, immediate and irreparable injury, loss or damage will result to the Estate if this property is sold or transferred before notice can be served and a hearing had on an application for a preliminary injunction.

334.

The Trustee is therefore entitled to an order temporarily enjoining Marc Lewis from selling, transferring, or conveying any right, title or interest in the property at 9395 Martin Road until a hearing on a preliminary injunction may be held or until a determination is made by this Court as to whether such property constitutes an asset of the Estate, whichever occurs first.

335.

Since the property at 10755 Willow Meadow Circle was purchased by Michael R. Buffa in whole or in part with proceeds of the fraudulent conveyances described in Paragraphs 304 through 306 above, immediate and irreparable injury, loss or damage will result to the Estate if this property is sold or transferred before notice can be served and a hearing had on an application for a preliminary injunction.

336.

The Trustee is therefore entitled to an order temporarily enjoining Michael R. Buffa from selling, transferring, or conveying any right, title or interest in the property at 10755 Willow Meadow Circle until a hearing on a preliminary injunction may be held or until a determination is made by this Court as to whether such property constitutes an asset of the Estate, whichever occurs first.

337.

Since the 1989 Porsche 911 T-Look and certain studio equipment were purchased by Joseph Buffa in whole or in part with proceeds of the fraudulent conveyances described in Paragraphs 211 through 212 and 305 through 306 above, immediate and irreparable injury, loss or damage will result to the Estate if this property is sold or transferred before notice can be served and a hearing had on an application for a preliminary injunction.

338.

The Trustee is therefore entitled to an order temporarily restraining and enjoining Joseph Buffa and Rachael Buffa from selling, transferring, or conveying any right, title or interest in the 1989 Porsche 911 T-Look and certain studio equipment until a hearing on a preliminary injunction may be held or until a determination is made by this Court as to whether such property constitutes an asset of the Estate, whichever occurs first.

339.

Since the property at 320 Cotton Court and certain jewelry were purchased in whole or in part with proceeds of the fraudulent conveyances described in Paragraphs 183 and 300 above, immediate and irreparable injury, loss or damage will result to the Estate if this property is sold or transferred before notice can be served and a hearing had on an application for a preliminary injunction.

340.

The Trustee is therefore entitled to an order temporarily enjoining Cathy Bergeron and Sylvain Bergeron from selling, transferring, or conveying any right, title or interest in the Cotton Court property and certain jewelry until a hearing on a preliminary injunction may be held or until a determination is made by this Court as to whether such property constitutes an asset of the Estate, whichever occurs first.

341.

Since the property at 125 Plantation Court and jewelry purchased from Maier and Berkele were purchased in whole or in part by Santi Buffa with proceeds of the fraudulent conveyances described in Paragraphs 201 through 202 above, immediate and irreparable

injury, loss or damage will result to the Estate if this property is sold or transferred before notice can be served and a hearing had on an application for a preliminary injunction.

342.

The Trustee is therefore entitled to an order temporarily enjoining Santi Buffa and Lisa Sutton from selling, transferring, or conveying any right, title or interest in the Plantation Court property and certain jewelry purchased from Maier and Berkele until a hearing on a preliminary injunction may be held or until a determination is made by this Court as to whether such property constitutes an asset of the Estate, whichever occurs first.

343.

Since the guitar and certain jewelry purchased from Maier and Berkele were purchased in whole or in part by Vince Buffa with proceeds of the fraudulent conveyances described in Paragraphs 206 through 209 above, immediate and irreparable injury, loss or damage will result to the Estate if these properties are sold or transferred before notice can be served and a hearing had on an application for a preliminary injunction.

344.

The Trustee is therefore entitled to an order temporarily enjoining Vince Buffa from selling, transferring, or conveying any right, title or interest in the guitar and the certain jewelry purchased from Maier and Berkele until a hearing on a preliminary injunction may be held or until a determination is made by this Court as to whether such property constitutes an asset of the Estate, whichever occurs first.

345.

As the Defendants have purchased other real and/or personal property in whole or in part with proceeds of the fraudulent conveyances described in Paragraphs 127 through 220 and 244 through 298 above, immediate and irreparable injury, loss or damage will result to the Estate if this property is sold or transferred before notice can be served and a hearing had on an application for a preliminary injunction.

346.

The Trustee is therefore entitled to an order temporarily enjoining the Defendants from selling, transferring, or conveying any right, title or interest in those items not already identified in this Court which were purchased in whole or in part with proceeds of these fraudulent conveyances until a hearing on a preliminary injunction may be held or until a determination is made by this Court as to whether such property constitutes an asset of the Estate, whichever occurs first.

COUNT III  
(FRAUDULENT CONVEYANCE -- 11 U.S.C. § 548(a)(1))  
(ALL DEFENDANTS)

347.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 346 above as if fully set forth herein verbatim.

348.

Conveyances and transfers described in Paragraphs 127 through 319 above were made with the actual intent of Sonic's officers, directors, and employees to deplete Sonic's assets and to hinder, delay or defraud Sonic's creditors in violation of 11 U.S.C. § 548(a)(1).

349.

Certain transfers described in Paragraphs 127 through 319 above are fraudulent conveyances and occurred within one year prior to the Petition Date.

350.

The Trustee is therefore entitled to avoid the conveyances and transfers described above and to recover such property, or the value thereof, for the benefit of Sonic's Bankruptcy Estate pursuant to 11 U.S.C. §§ 548(a)(1) and 550. The Trustee is also entitled to costs and interest.



COUNT IV  
(FRAUDULENT CONVEYANCE -- 11 U.S.C. § 548(a)(2))  
(ALL DEFENDANTS)

351.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 350 above as if fully set forth herein verbatim.

352.

The conveyances and transfers of real property described in Paragraphs 127 through 319 above were made by Sonic without the receipt of reasonably equivalent value from the Defendants.

353.

Upon information and belief, the conveyances and transfers described in Paragraphs 127 through 319 above were made at a time when Sonic was insolvent or Sonic was rendered insolvent by the result of such transfers; and such transfers left Sonic with unreasonably small capital to engage in its ongoing business or when Sonic intended to incur or believed that it would incur debts beyond its ability to pay as such debts ordinarily matured.

354.

Fraudulent conveyances and transfers described in Paragraphs 127 through 319 above occurred within one year of the Petition Date.

355.

The Trustee is therefore entitled to avoid these conveyances and transfers of property and to recover them, or their value, for the benefit of Sonic's Bankruptcy Estate pursuant to 11 U.S.C. §§ 548(a)(2) and 550. The Trustee is also entitled to costs and interest.

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COUNT V

(PREFERENCE - 11 U.S.C. § 547)

(ALL DEFENDANTS)

356.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 355 above as if fully set forth herein verbatim.

357.

The transfers described in Paragraphs 127 through 213 above were transfers of an interest of Sonic in property made to or for the benefit of the identified Defendants, who were alleged creditors of Sonic. These transfers purportedly were made for or on account of an alleged antecedent debt owed by Sonic to these Defendants.

358.

Upon information and belief, these transfers, described in Paragraphs 127 through 213 above, were made while Sonic was insolvent or, alternatively, the transfers rendered Sonic insolvent. Many of the fraudulent transfers described in Paragraphs 127 through 213 above also were made on or within 90 days before the Petition Date.

359.

The transfers described in Paragraphs 127 through 213 above enabled the Defendants to receive more than they would have received if (1) Sonic's bankruptcy case were one under Chapter 7 of Title 11, (2) the transfers in question had not been made, and (3) the Defendants received payment of their debt to the extent provided by the provisions of Title 11.

360.

These transfers and conveyances and perhaps others based upon the evidence therefore constitute preferences within the meaning of 11 U.S.C. § 547(b)(4)(A). The Trustee is entitled to avoid these preferences and recover them for the benefit of Sonic's Bankruptcy Estate pursuant to 11 U.S.C. §§ 547 and 550. The Trustee is also entitled to costs and interest.

COUNT VI  
(INSIDER PREFERENCES - 11 U.S.C. § 547)  
(ALL DEFENDANTS)

361.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 360 above as if fully set forth herein verbatim.

362.

Transfers described in Paragraphs 127 through 213 above were transfers of an interest of Sonic in property made to or for the benefit of the identified Defendants, who were alleged creditors of Sonic. These transfers purportedly were made for or on account of an alleged antecedent debt owed by Sonic to these Defendants.

363.

Upon information and belief, the transfers described in Paragraphs 127 through 213 above were made while Sonic was insolvent or, alternatively, the transfers rendered Sonic insolvent. Most of these transfers also occurred within one year before the Petition Date to these Defendants, who were insiders of Sonic at the time of the transfers were made.

364.

These transfers and perhaps others based upon the evidence therefore constitute preferences within the meaning of 11 U.S.C. § 547(b)(4)(B). The Trustee is entitled to avoid these preferences and recover them for the benefit of Sonic's Bankruptcy Estate pursuant to 11 U.S.C. §§ 547 and 550. The Trustee is also entitled to costs and interest.

COUNT VII  
(UNAUTHORIZED TRANSFERS - 11 U.S.C. § 549)  
(AIRPULSE, JODY BUFFA, AND THE DEFENDANT EMPLOYEES)

365.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 364 above as if set forth herein verbatim.

366.

The transfers described in Paragraphs 172 and 176 and 221 through 239 were transfers of an interest of Sonic in property made to or for the benefit of the identified Defendants who were alleged creditors of Sonic.

367.

The transfers described in Paragraphs 172 and 176 and 221 through 239 were made after Sonic had filed for bankruptcy.

368.

These transfers and perhaps others based upon the evidence therefore constitute unauthorized post-petition transfers within the meaning of 11 U.S.C. § 549. The Trustee is entitled to avoid these transfers and recover then for the benefit of Sonic's Bankruptcy Estate pursuant to 11 U.S.C. § 547 and 550. The Trustee is also entitled to costs and interest.

COUNT VIII  
(FRAUDULENT CONVEYANCE - O.C.G.A. § 18-2-22(1) and (3))  
(ALL DEFENDANTS)

369.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 368 above as if fully set forth herein verbatim.

370.

Conveyances and transfers of real and personal property described in Paragraphs 127 through 312 above were undertaken by the identified Defendants at a time when Sonic was insolvent or, in the alternative, such transfers rendered Sonic insolvent. Upon information and belief, these conveyances and transfers were not for valuable consideration. These conveyances and transfers therefore constitute fraudulent conveyances within the meaning of O.C.G.A. § 18-2-22(1) and (3).

371.

The Trustee is therefore entitled to an order by this Court setting aside and canceling these fraudulent conveyances made by Sonic pursuant to 11 U.S.C. § 544(b)

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and O.C.G.A. § 18-2-22. The Trustee may recover from these Defendants, jointly and severally, such transfer, or the value thereof, pursuant to 11 U.S.C. § 550. The Trustee is also entitled to costs and interest.

372.

In the alternative, the Trustee is entitled to recover from these Defendants and any recipients of the proceeds of the above-described conveyances and transfers, all amounts fraudulently conveyed from Sonic, plus interest thereon from the date of the transfer.

373.

The Trustee is further entitled to an award of punitive damages as a result of the willful and intentional misconduct of the Defendants.

COUNT IX  
(FRAUDULENT CONVEYANCE - O.C.G.A. § 18-2-22(2))  
(ALL DEFENDANTS)

374.

Trustee adopts and realleges the allegations contained in Paragraphs 1 through 373 above as if fully set forth herein verbatim.

375.

Conveyances and transfers of real and personal property described in Paragraphs 127 through 312 above were undertaken with the intention to hinder, delay or defraud creditors of Sonic and this intention was known to the recipients of these conveyances and transfers. These conveyances and transfers therefore constitute fraudulent conveyances within the meaning of O.C.G.A. § 18-2-22(2).

376.

The Trustee is entitled to an order by this Court setting aside and canceling these fraudulent conveyances and transfers made by Sonic pursuant to 11 U.S.C. § 544(b) and O.C.G.A. § 18-2-22. The Trustee may recover from the Defendants, jointly and severally, such transfer, or the value thereof, pursuant to 11 U.S.C. § 550. The Trustee is also entitled to costs and interest.

377.

In the alternative, the Trustee is entitled to recover from the Defendants and any recipients of the proceeds of the above-described conveyances and transfers, all amounts fraudulently conveyed from Sonic, plus interest thereon from the date of the transfer.

378.

The Trustee is further entitled to an award of punitive damages as a result of the willful and intentional misconduct of the Defendants.

COUNT X  
(FRAUD - O.C.G.A. §§ 51-6-1, 51-6-2)  
(ALL DEFENDANTS)

379.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 378 above as if fully set forth herein verbatim.

380.

As described in Paragraph 125, John S. Buffa represented that he had identified all transfers of property between Sonic and insiders of Sonic made within one year of Sonic's filing bankruptcy on the Statement of Financial Affairs. This representation was false and John S. Buffa knew at the time this representation was made that it was false, or made this representation with a reckless disregard as to the truth or falsity of this statement.

381.

As described in Paragraphs 184 through 211, John S. Buffa and Michael A. Buffa or their agent indicated on Sonic checks that payments were being made to CS Systems, Data Tree, DC Computing, MHL Consulting, JCB Marketing, Micro Consulting, Personal Computing Solutions, QBP, Southern Media Systems and Symtech purportedly for goods and services rendered to Sonic. Upon information and belief, all of these representations were false. Upon information and belief, John S. Buffa and Michael A. Buffa knew at the time these representations were made, that they were false or made these representations with a reckless disregard as to the truth or falsity of these statements.

382.

John S. Buffa, Michael A. Buffa, Hugo Galluzzi, the Original Buffa Defendants, Related Individual Defendants, and Defendant Family Companies also knew, at the time they entered into the self-dealing transactions described and made false entries on the books and records of Sonic concerning these transactions, that these entries and the transactions to which they related were false. Alternatively, these Defendants acted with a reckless disregard as to the truth or falsity of these representations. Upon information and belief, these representations were made with the knowledge and/or assistance of the other Defendants involved in each respective transaction.

383.

Upon information and belief, all of these misrepresentations were made willfully and intentionally and with the intent to deceive Sonic, its creditors, the Trustee and ultimately this Court.

384.

Sonic, its creditors, and the Trustee reasonably relied on these representations, including the false entries on the books and records of Sonic, in connection with this case.

385.

Sonic has been damaged as a proximate result of these misrepresentations and the Trustee is entitled to recover the full amount of the damages, once they are determined, from these Defendants and/or the corporate entities of which they are principals for the benefit of Sonic's Estate, plus interest thereon. All funds held by all of these Defendants which came into their possession as a result of their scheme to defraud Sonic should be impressed with a trust for the benefit of the Trustee. Title to all assets purchased with the funds should be impressed with a first priority lien in favor of Sonic's Estate superior to all other claims or claimants.

386.

The Trustee is also entitled to recover from all of these Defendants, jointly and severally, his attorneys' fees and expenses incurred in this action.

387.

The Trustee is further entitled to an award of punitive damages as a result of the willful and intentional misconduct of these Defendants.

COUNT XI  
(CONSPIRACY TO DEFRAUD)  
(ALL DEFENDANTS)

388.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 387 above as if fully set forth herein verbatim.

389.

By engaging in the conduct described in Paragraphs 76 through 312 above, the Defendants have engaged in conspiracy to defraud the Trustee, Sonic, Sonic's creditors and consumers.

390.

The Trustee is therefore entitled to recover the actual damages incurred as a result of this conspiracy to defraud, plus interest thereon. The Trustee is also entitled to recover from Defendants, jointly and severally, his reasonable attorneys' fees and expenses incurred in this litigation.

391.

The Trustee is further entitled to an award of punitive damages as the result of the willful and intentional misconduct of the Defendants.

COUNT XII  
(BREACH OF FIDUCIARY DUTIES)  
(JOHN S. BUFFA, JUDY BUFFA, MICHAEL A. BUFFA, MICHAEL R. BUFFA,  
HUGO GALLUZZI, AND THE DEFENDANT EMPLOYEES)

392.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 391 above as if fully set forth herein verbatim.



393.

By engaging in the conduct described in Paragraphs 76 through 312 above, John S. Buffa, Judy Buffa, Michael A. Buffa, Michael R. Buffa, Hugo Galluzzi, and the Defendant Employees breached their fiduciary duties to Sonic.

394.

The Trustee is therefore entitled to recover from these Defendants, jointly and severally, all damages suffered by Sonic as a result of their actions and/or inactions, plus interest thereon. The Trustee is also entitled to recover his reasonable attorneys' fees and expenses incurred in this litigation.

395.

The Trustee is further entitled to an award of punitive damages as a result of the willful and intentional misconduct of these Defendants.

COUNT XIII  
(ACCOUNTING)  
(ALL DEFENDANTS)

396.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 395 above as is fully set forth herein verbatim.

397.

As a result of the misconduct described in Paragraphs 76 to 312 above, all Defendants should be required to account for these transfers and conveyances, and all similar transfers, conveyances, other instances of self-dealing and breaches of fiduciary duties from the date of Sonic's incorporation to the present.

398.

Due to the exigencies of this case, this accounting should take place immediately.

399.

The Defendants should bear all costs associated with this accounting.

COUNT XIV  
(CONVERSION)  
(ALL DEFENDANTS)

400.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 399 above as if fully set forth herein verbatim.

401.

The Defendants have converted to their own use and benefit funds and other property belonging to the Bankruptcy Estate.

402.

On or about June 12, 1995, demand was made on the Original Defendants for the return of all such property, but these Defendants refused to do so.

403.

Demand is hereby made on the remaining Defendants for the return of all such property.

404.

The Bankruptcy Estate has been damaged in an amount not yet determined as a result of Defendants' willful conversion of Sonic's funds and property.

405.

The Trustee is entitled to recover from Defendants, jointly and severally, the full amounts of these sums and property, once they are determined, plus interest thereon, for the benefit of the Bankruptcy Estate. The Trustee is also entitled to recover from Defendants, jointly and severally, his reasonable attorneys' fees and expenses incurred in this litigation. All funds and/or property held by Defendants as a result of their conversion of corporate funds and property and the proceeds of such property should be impressed with a trust for the benefit of the Bankruptcy Estate.

406.

The Trustee is also entitled to an award of punitive damages as a result of the willful and intentional misconduct of Defendants.

COUNT XV  
(UNJUST ENRICHMENT)  
(ALL DEFENDANTS)

407.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 406 above as if fully set forth herein verbatim.

408.

Defendants have no legitimate rights to the funds and property of the Bankruptcy Estate which they have appropriated to their own use and benefit and cannot, in equity and good conscience, retain these funds and property.

409.

~~The Bankruptcy Estate has been damaged by the unjust enrichment of Defendants in an amount not yet determined.~~

410.

The Trustee is entitled to recover from Defendants the funds and property which have unjustly enriched them for the benefit of the Bankruptcy Estate, plus interest thereon. The Trustee is also entitled to recover from Defendants, jointly and severally, his attorneys' fees and expenses incurred in this action. All funds and property held by Defendants as a result of their unjust enrichment should be impressed with a trust for the benefit of the Bankruptcy Estate.

COUNT XVI  
(INJUNCTIVE RELIEF)  
(ALL DEFENDANTS)

411.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 410 above as if fully set forth herein verbatim.

412.

The Trustee is currently involved in an investigation to determine the full amount of funds and property which, upon information and belief, have been wrongfully and

fraudulently converted by Defendants to their own use in violation of their employment duties and other duties and responsibilities to Sonic.

413.

Upon information and belief, substantial amounts of these misappropriated funds and property are in the form of cash and liquid assets and there is a substantial risk that Defendants will secret away, or dispose of these funds, or cause the misappropriated funds and/or property to be transferred beyond the limits of the State of Georgia or perhaps beyond the limits of the United States.

414.

The Bankruptcy Estate will suffer irreparable injury for which there is no remedy at law if temporary and preliminary injunctive relief is not granted.

415.

The Trustee is therefore entitled to a temporary restraining order and interlocutory injunction: a) enjoining and restraining the Defendants from transferring, conveying, pledging, or otherwise disposing of any of their assets, including all real and personal property, except for the payment of their ordinary and reasonable living expenses in an amount to be determined by this Court; b) enjoining and restraining the Defendants, along with any other persons having signature authority on or access to any accounts held in their names or for their benefit at any bank, savings and loan association, or other lending institution and any safety deposit boxes in their names or for the benefit of these Defendants, from withdrawing, pledging, conveying, removing, transferring, or otherwise disposing of the funds or other property located in these accounts or safety deposit boxes without prior order of this Court; c) enjoining and restraining the Defendants from removing any assets or property from the State of Georgia or the United States; and d) enjoining and restraining the Defendants from removing or destroying any books, records, or other documents relating in any way to the events described herein.

416.

The Trustee is entitled to recover from Defendants, jointly and severally, his reasonable attorneys' fees and expenses incurred in this action.

COUNT XVII  
(FEDERAL RICO CLAIMS PURSUANT TO 18 U.S.C. §1962(c))  
(ALL DEFENDANTS)

417.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 416 above as if fully set forth herein verbatim.

418.

Each of the Defendants to this action is a "person" as the term is defined by RICO at 18 U.S.C. § 1961(3).

419.

The Defendants associated in fact with each other to form an "enterprise" as that term is used at 18 U.S.C. § 1961(4).

420.

Beginning in, at the latest, 1988, and continuing to the present day, John S. Buffa, Michael A. Buffa, Hugo Galluzzi, Martha Vitale and Joe Vitale associated together for the common purpose of defrauding Sonic's creditors and Sonic's individual consumers through use of various telemarketing schemes involving the interstate wires and mails through TCS, MBC and Sonic. By, at the latest, April 1991, Antonio Buffa, Joseph Buffa, Santi Buffa, Edith Anderson, Graziella Buffa, Michael R. Buffa, Damian Cipriani, and Nino Buffa joined in the activities of this enterprise through their employment with MBC. Upon their employment with Sonic or receipt of wrongfully obtained funds from Sonic, Cathy Bergeron, Marc Lewis, Juan Buffa, Geri Clary, Luis Cipriani, Rosa Buffa, Lisa Sutton, Vince Buffa, and John Vitale also joined in and adopted the activities of this enterprise.

421.

As part of the regular activities of this enterprise, the Defendants named in Paragraph 420 above deliberately removed money and property from TCS, MBC and Sonic for their personal use, for the personal use of their family members and to set up additional sham corporations to hide the assets obtained through their wrongdoing. In addition to the Defendants named in Paragraph 420 above, the Defendant Family Companies and Timberland, Sylvain Bergeron, Cynthia Buffa, Rachael Buffa and Michael R. Buffa all knowingly received and, in many cases, subsequently transferred the ill-gotten proceeds of the enterprise's activities to other Defendants. Accordingly, all of the named Defendants conducted and participated in the activities of this enterprise, from time to time as described herein.

422.

The activities of the Defendants' enterprise were in and affected interstate commerce.

423.

The Defendants' enterprise engaged in a "pattern of racketeering activity" as that term is defined at 18 U.S.C. § 1961(5). Among the predicate acts which give rise to this "pattern of racketeering activity" were the following:

(1) Sonic's provision to local exchange carriers of fraudulent information that particular consumers had requested that their long distance service be switched to Sonic. In providing the local exchange carriers with this fraudulent information, these persons used the interstate mails and wires. Each fraudulent change so reported constitutes an independent mail fraud or wire fraud violation.

(2) Sonic's provision of billing information to the local exchange carriers so as to collect an unlawful debt for the consumers' use of Sonic services after the consumers were unlawfully switched to Sonic. Sonic provided the LECs with this information through the use of the interstate mails and wires, and consumers subsequently received

bills for these purported services through the interstate mails. Each such incident constitutes an independent mail fraud or wire fraud violation.

(3) John S. Buffa's deliberate and fraudulent failure to report payments to the remaining Original Defendants, Related Individual Defendants and Defendant Family Companies as insiders of Sonic on Sonic's schedules and statements of financial affairs constitutes perjury and fraud connected with the case under Title 11. Each such transfer, described in more detail in Paragraphs 127 through 212 herein, also constitutes an independent act of fraud in connection with a case under Title 11.

424.

All of the predicate acts of racketeering activity described herein occurred after October 15, 1970, and within ten years of each other, in furtherance of an intentional scheme to defraud consumers, Sonic, and Sonic's creditors.

425.

As a direct and proximate result of the Defendants' violations of 18 U.S.C. § 1962(c), Sonic, the Sonic Class Members, and Sonic's creditors have suffered substantial injuries to their business and property.

426.

On behalf of the Bankruptcy Estate and the Sonic Class Members, the Trustee is entitled to recover three (3) times the actual damages sustained by Sonic and Sonic Class Members as a result of the Defendants' violations of 18 U.S.C. § 1962(c). The Trustee is also entitled to recover the costs of this suit, reasonable attorneys' fees and prejudgment interest on the damages sustained by Sonic.

COUNT XVIII  
(FEDERAL RICO CLAIMS UNDER 18 U.S.C. §1962(d))  
(ALL DEFENDANTS)

427.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 426 above as if fully set forth herein verbatim.

428.

Each of the Defendants to this action is a "person" as the term is defined by RICO at 18 U.S.C. § 1961(3).

429.

The Defendants associated in fact with each other to form an "enterprise" as that term is used at 18 U.S.C. § 1961(4).

430.

Beginning in, at the latest, 1988, and continuing to the present day, Defendants John S. Buffa, Michael A. Buffa, Hugo Galluzzi, Martha Vitale and Joe Vitale associated together for the common purpose of defrauding individual consumers through use of various telemarketing schemes involving the interstate wires and mails through TCS, MBC and Sonic. By, at the latest, April 1991, Defendants Antonio Buffa, Joseph Buffa, Santi Buffa, Edith Anderson, Graziella Buffa, Michael R. Buffa, Damian Cipriani, and Nino Buffa joined in the activities of this enterprise through their employment with MBC. Upon their employment with Sonic or receipt of wrongfully obtained funds from Sonic, Defendants Cathy Bergeron, Marc Lewis, Juan Buffa, Geri Clary, Luis Cipriani, Rosa Buffa, Lisa Sutton, Vince Buffa, and John Vitale also joined in and adopted the activities of this enterprise.

431.

As part of the regular activities of this enterprise, the Defendants named in Paragraph 430 above deliberately removed money and property from TCS, MBC and Sonic for their personal use, for the personal use of their family members and to set up additional sham corporations to hide the assets obtained through their wrongdoing. In addition to the Defendants named in Paragraph 430 above, the Defendant Family Companies and Defendants Timberland, Sylvain Bergeron, Cynthia Buffa, Rachael Buffa and Michael R. Buffa all knowingly received and, in many cases, subsequently transferred the ill-gotten proceeds of the enterprise's activities to other Defendants.



432.

The activities of the Defendants' enterprise were in and affected interstate commerce.

433.

Each Defendant has conspired to conduct or participate in the affairs of this enterprise through a pattern of racketeering activity, for the purpose of defrauding Sonic and its creditors.

434.

As part of this conspiracy, each Defendant agreed that the enterprise would be conducted through a pattern of racketeering activity (including related acts of mail fraud, wire fraud, perjury and other forms of obstruction of justice and/or fraud connected with the case under Title 11). Each Defendant also agreed that he, she or it would participate in this enterprise by committing predicate acts or aiding and abetting others to commit such acts, as alleged more fully at Paragraphs 76 through 312, for the purpose of executing the enterprise's scheme to defraud consumers, Sonic, and Sonic's creditors in violation of 18 U.S.C. § 1962(a) or (c). Each Defendant therefore has violated 18 U.S.C. § 1962(d).

435.

As a direct and proximate result of the Defendants' violations of 18 U.S.C. § 1962(d), Sonic and Sonic's creditors have suffered substantial injury to their business and property.

436.

On behalf of the Bankruptcy Estate and the Sonic Class Members, the Trustee is entitled to recover against the Defendants jointly and severally for three (3) times the actual damages sustained by Sonic and Sonic Class Members as a result of the Defendants' violations of 18 U.S.C. § 1962(d). The Trustee is also entitled, pursuant to 18 U.S.C. § 1964(c), to recover the costs of this suit, reasonable attorneys' fees and prejudgment interest on the damages sustained by Sonic.

COUNT XIX  
(GEORGIA RICO UNDER O.C.G.A. § 16-14-4(b))  
(ALL DEFENDANTS)

437.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 436 above as if fully set forth herein verbatim.

438.

Each of the Defendants to this action is a "person" as defined by O.C.G.A. § 16-14-4.

439.

The Defendants associated in fact with each other to form an "enterprise," as that term is used at O.C.G.A. § 14-14-3(6).

440.

Beginning sometime in 1990 and continuing to the present day, the Defendants associated together for the common purpose of defrauding individual consumers, Sonic and its creditors by creating a series of sham corporations whose purpose was to acquire money and property from individual consumers through deliberate and fraudulent means, and then deliberately and fraudulently remove money and property from the sham corporations for personal use and to set-up subsequent sham corporations.

441.

Each of the Defendants conducted or participated in the affairs of the enterprise through a "pattern of racketeering activity" as that term is defined at O.C.G.A. § 16-14-3(8). These Defendants have committed numerous, related acts of theft by deception, theft by conversion, theft by receiving stolen property, and perjury, as well as mail fraud, wire fraud, and fraud connected with a case under Title 11 (all of which are conduct defined as racketeering activity under 18 U.S.C. § 1961 and incorporated as predicate acts under Georgia RICO under O.C.G.A. § 16-14-3(9)(A)(xxix)).

The Defendants' conduct constitutes a "pattern of racketeering activity" under Georgia RICO, and includes the following predicate acts:

(a) Some, if not all, of the Individual Defendants provided LECs with fraudulent information that particular consumers had requested that their long distance service be switched to Sonic. In providing the local exchange carriers with this fraudulent information, these Defendants used the interstate mails and wires. Each fraudulent change so reported constitutes an independent mail fraud or wire fraud violation as well as an act of theft under Georgia law.

(b) Some, if not all, of the individual Defendants provided LECs with billing information to collect unlawful debts for the use of Sonic services after consumers were unlawfully switched to Sonic. Sonic provided the LECs with this information through the use of the interstate mails and wires, and consumers subsequently received bills for these purported services through the interstate mails. Each such incident constitutes an independent mail fraud or wire fraud violation as well as an act of theft under Georgia law.

(c) John S. Buffa deliberately and fraudulently failed to report payments to the remaining Original Defendants, the Related Individual Defendants and the Defendant Family Companies as insiders of Sonic on Sonic's schedules and statements of financial affairs. John S. Buffa's declaration constitutes perjury and fraud connected with the case under Title 11.

(d) Each fraudulent transfer and conveyance from Sonic to the Individual Defendants and Defendant Family Companies described in Paragraphs 127 through 212 herein constitutes an independent act of fraud in connection with a case under Title 11;

(e) As described in Paragraphs 127 to 212 herein, John S. Buffa, Michael A. Buffa, Judy Buffa, Michael R. Buffa and Hugo Galluzzi converted assets belonging to Sonic to their own personal uses, the uses of their family members or their related companies;

(f) As described in Paragraphs 127 to 212 herein, the Individual Defendants and the Defendant Family Companies received assets from Sonic for which no value was received from them by Sonic. In receiving these assets, these Defendants knew or should have known that these assets were unlawfully taken from Sonic, and were the proceeds of Sonic's unlawful slamming activities. Each such receipt of assets constitutes theft by receiving stolen property under Georgia law.

443.

All of these predicate acts of racketeering activity under Georgia RICO occurred after July 1, 1980, and the last of such incidents occurred within four years after the commission of a prior incident of racketeering activity.

444.

As a direct and proximate result of these Defendants' violations of O.C.G.A. § 16-14-4(b), Sonic, the Sonic Class Members and Sonic's creditors have suffered substantial injuries.

445.

On behalf of the Bankruptcy Estate and the Sonic Class Members, the Trustee is entitled to recover against the Defendants jointly and severally for three (3) times the actual damages sustained by Sonic and Sonic Class Members as a result of the Defendants' violations of O.C.G.A. § 16-14-4(b). The Trustee is entitled, pursuant to O.C.G.A. § 16-14-6(c), to recover the costs and attorneys' fees of investigation and litigation reasonably incurred in connection with this suit. The Trustee is further entitled to recover prejudgment interest on the damages sustained by Sonic.

446.

As a result of their violation of O.C.G.A. § 16-14-4(b), the Defendants should also be required to divest themselves of any interest in the real and personal property described herein which was paid for, directly or indirectly from Sonic monies.

COUNT XX  
(GEORGIA RICO UNDER O.C.G.A § 16-14-4(a))  
(JOHN S. BUFFA, JUDY BUFFA, HUGO GALLUZZI AND DATA TREE)

447.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 446, as if fully set forth herein verbatim.

448.

John S. Buffa, Judy Buffa, Hugo Galluzzi and Data Tree are "persons" as that term is used in O.C.G.A. § 16-14-4(a).

449.

AirPulse and ATN are "enterprises" as that term is defined at O.C.G.A. § 16-14-3(6).

450.

As alleged more fully in Paragraph 442(a) through (f), these Defendants and others have engaged in a "pattern of racketeering activity" as that term is defined by O.C.G.A. § 16-14-3(8).

451.

These Defendants have used or invested the income or the proceeds of the income derived from this pattern of racketeering activity to acquire an interest in and to establish the operation of AirPulse and ATN.

452.

The acquisition of an interest in and the establishment and operation of AirPulse and ATN through the income or proceeds of a racketeering activity is in violation of O.C.G.A. § 16-14-4(a).

453.

As a direct and proximate result of these Defendant's violations of O.C.G.A. § 16-14-4(a), Sonic, its creditors, and Sonic's Class Members have suffered substantial injuries.

454.

On behalf of the Bankruptcy Estate and the Sonic Class Members, the Trustee is entitled to recover against the Defendants jointly and severally for three (3) times the actual damages sustained as a result of the Defendants' violations of O.C.G.A. § 16-14-4(a). The Trustee is also entitled, pursuant to O.C.G.A. § 16-14-6(c), to recover the costs and attorneys' fees of investigation and litigation reasonably incurred in connection with this suit. The Trustee is further entitled to recover prejudgment interest for damages sustained by Sonic and its creditors.

COUNT XXI  
(GEORGIA RJCO UNDER O.C.G.A § 16-14-4(a))  
(ALL DEFENDANTS)

455.

The Trustee adopts and realleges the allegations contained in Paragraphs 1 through 454, as if fully set forth herein verbatim.

456.

Each of the Defendants in this action is a "person" as required by O.C.G.A. § 16-14-4(a).

457.

As alleged more fully at Paragraph 442 (a) through (f) above, these Defendants have engaged in a "pattern of racketeering activity" as that term is defined by O.C.G.A. § 16-14-3(8).

458.

As described more fully in Paragraphs 127 through 312 above, the respective Defendants have used or invested, directly or indirectly, the income or the proceeds of the income derived from the pattern of racketeering activity to acquire or maintain an interest in or control of the following real and personal property, including money:

- (a) The Horseshoe Bend Property;
- (b) Cherokee Properties;
- (c) Lot 24 in the Morton Chase Subdivision, 10655 Morton Chase Way;

- (d) 765 Winnmark Court;
- (e) 655 Waterbrook Terrace;
- (f) 1992 GMC Vandura;
- (g) John Deere Tractor;
- (h) 210 Piney Hill Court;
- (i) 275 Brandenburg Circle;
- (j) 1994 Toyota 4 Runner;
- (k) 9395 Martin Road;
- (l) 10755 Willow Meadow Circle;
- (m) 1989 Porsche 911 T-Look;
- (n) 320 Cotton Court;
- (o) 125 Plantation Court;
- (p) Lexus;
- (q) 115 Sun Moss Court;
- (r) Horse Trailer;
- (s) Acura NSX;
- (t) Truck;
- (u) Motorcycle;
- (v) Studio Equipment;
- (w) Jewelry purchased from Maier & Berkele by Santi Buffa and Vince Buffa
- (x) Jewelry purchased from Brown & Co.;
- (y) Guitar;
- (z) Any and all funds contained in the deposit accounts listed in Paragraphs through held by or on behalf of these Defendants that can be traced, directly or indirectly, to Sonic;
- (aa) Any and all funds contained in other deposit accounts held by or on behalf of these Defendants that can be traced, directly or indirectly, to Sonic; and

(bb) Any and all other personal and real property that the Defendants own or have any interest that was paid for, in whole or in part, by funds belonging to Sonic, including but not limited to a Jaguar XJS, owned by John S. and/or Judy Buffa and a Chrysler LHS, also owned by John S. and/or Judy Buffa.

459.

The acquisition or maintenance of an interest in or control over the real and personal property listed above through the income or proceeds of a racketeering activity was in violation of O.C.G.A. § 16-14-4(a).

460.

As a direct and proximate result of the Defendants' violations of O.C.G.A. § 16-14-4(a), Sonic, its creditors, and consumers have suffered substantial injuries.

461.

On behalf of the Bankruptcy Estate and Sonic Class Members, the Trustee is entitled to recover against the Defendants jointly and severally for three (3) times the actual damages sustained as a result of the Defendants' violations of O.C.G.A. § 16-14-4(a). The Trustee is also entitled pursuant to O.C.G.A. § 16-14-6(c) to recover the costs and attorneys' fees of investigation and litigation reasonably incurred in connection with this suit. The Trustee is further entitled to recover prejudgment interest for damages sustained as a result of these violations of O.C.G.A. § 16-14-4(a).

462.

The Trustee is currently involved in an investigation to determine the full amount of funds and property which, upon information and belief, have been acquired by the Defendants in violation of O.C.G.A. § 16-14-4(a).

463.

Upon information and belief, given their past conduct, there is a substantial risk that Defendants will secret away, or dispose of, or cause these funds and/or property to be



Date: April 21, 2004

transferred beyond the limits of the State of Georgia or perhaps beyond the limits of the United States.

464

The Bankruptcy Estate and the Sonic Class Members will suffer irreparable injury for which there is no remedy at law if temporary and preliminary injunctive relief is not granted.

465.

The Trustee is therefore entitled to a temporary restraining order and interlocutory injunction: a) enjoining and restraining the Defendants from transferring, conveying, pledging, or otherwise disposing of any of the listed assets; b) enjoining and restraining the Defendants, along with any other persons having signature authority on or access to these funds and property, from withdrawing, pledging, conveying, removing, transferring, or otherwise disposing of the funds or other property without prior order of this Court; c) enjoining and restraining the Defendants from removing any assets or property from the State of Georgia or the United States; and d) enjoining and restraining the Defendants from removing or destroying any books, records, or other documents relating in any way to the events described herein before the Court makes a final determination on the merits of this action.

COUNT XXII

(GEORGIA RICO — O.C.G.A. § 16-14-4(c))  
(ALL DEFENDANTS)

466.

As alleged more fully at Paragraphs 60 through 312, each of the Defendants have conspired to conduct or participate in the affairs of the enterprise through a pattern of racketeering activity, for the purpose of defrauding Sonic, its creditors and the Sonic Class Members.

467.

Each of the Defendants conspired and agreed that the enterprise would be conducted through a pattern of racketeering activity, and conspired and agreed that the

Defendants would commit related predicate acts as alleged more fully at Paragraph 442 (a) through (f), or to solicit, aid or abet others to commit such acts for the purpose of defrauding Sonic and its creditors. The Defendants' agreement is in violation of O.C.G.A. § 16-14-4(c).

468.

As a direct and proximate result of the Defendants' violations of O.C.G.A. § 16-14-4(c), Sonic and Sonic's creditors have suffered substantial injury.

469.

On behalf of the Bankruptcy Estate and the Sonic Class Members, the Trustee is entitled to recover against the Defendants jointly and severally for three (3) times the actual damages sustained as a result of the Defendants' violations of O.C.G.A. § 16-14-4(c). The Trustee is also entitled, pursuant to O.C.G.A. § 16-14-6(c), to recover the costs and attorneys' fees of investigation and litigation reasonably incurred in connection with this suit. The Trustee is also entitled to recover prejudgment interest for the damages sustained as result of Defendants' violations of O.C.G.A. § 16-14-4(c).

COUNT XXIII  
(FRAUDULENT SLAMMING OF SONIC CLASS MEMBERS)  
(INDIVIDUAL DEFENDANTS)

470.

Trustee adopts and realleges the allegations contained in Paragraphs 1 through 469 above as if fully set forth herein verbatim.

471.

Trustee is informed and believes, and thereon alleges, that each of the Individual Defendants is responsible in some manner for the events referred to herein and caused injury and damages as alleged herein.

472.

Trustee is informed and believes, and thereon alleges, that at all times herein mentioned, the Individual Defendants, and each of them, were the agents, servants, and employees of Sonic and of their co-defendants. and in doing the things hereinafter

mentioned were acting in the course and scope of their employment as such agents, servants, and employees, and with the permission, consent, knowledge, and/or ratification of their co-defendants, principals, and employers.

473.

The Individual Defendants have engaged in a pattern of illegal activities, mixed personal and corporate financial dealings and failed to observe corporate formalities so as to render Sonic Communications, Inc., the mere alter ego of the Individual Defendants. To adhere to the fiction of separate corporate existence between Sonic and the Individual Defendants would promote fraud and injustice, and the Individual Defendants therefore should be held liable for all actions of Sonic and its agents and employees.

474.

The practice of slamming the Sonic Class Members by the Individual Defendants on behalf of Sonic constitutes fraud, interference with prospective economic advantage, interference with Sonic Class Members' contracts with their pre-Sonic long distance carrier, and unfair, fraudulent, and/or unlawful business practices.

475.

The Defendants have no legitimate right to the proceeds or assets acquired with Sonic Class Members' funds which the Defendants have appropriated to their own use and benefit and they cannot, in equity or in law or in good conscience, retain these proceeds and assets.

476.

As a direct and proximate result of the Individual Defendants' conduct, the Defendants and each of them have received and continue to hold money or other assets that rightfully belong to the Sonic Class Members.

477.

The Trustee and Sonic Class Members are therefore entitled to recover from the Defendants compensatory damages in an amount equal to the amount the Defendants and the LECs have collected from Sonic Class Members for fraudulent and unauthorized long

distance charges, switching fees, late payment fees or any other fee or charge derived from the scheme, including interest. The Trustee is also entitled to recover prejudgment interest, punitive damages, costs and attorneys' fees of investigation and litigation reasonably incurred in connection with this suit.

WHEREFORE, the Trustee prays for relief by virtue of this Complaint as follows:

- (a) That this Court issue a temporary restraining order and preliminary injunction restraining and enjoining the Defendants from disposing of their assets in the manner described in Count XVI;
- (b) That this Court issue an order directing an equitable lien be imposed upon the real and personal property described in Count II pending the resolution of this action;
- (c) That this Court issue a judgment declaring the conveyances and transactions described herein to be fraudulent conveyances, preferences and/or avoidable post-petition transfers and directing the recipients of all real and personal property and/or any proceeds therefrom, to return the property and/or its value to the Trustee for inclusion in the Bankruptcy Estate;
- (d) That this Court direct the Defendants to make a full accounting of all their self-dealing transactions and conveyances immediately;
- (e) That this Court order the Defendants to pay damages for their fraud, conspiracy to defraud conversion, unjust enrichment and breaches of fiduciary duties in an amount to be determined a trial, plus interest thereon;
- (f) That this Court order the Defendants jointly and severally to pay three times the actual damages sustained as the result of the Defendants' violations of 18 U.S.C. § 1962(c), 18 U.S.C. § 1962(d), O.C.G.A. § 16-14-4(a), O.C.G.A. § 16-14-4(b), and O.C.G.A. § 16-14-4(c);
- (g) That this Court order the Defendants to pay the Trustee its reasonable attorneys' fees and costs in connection with this action;
- (h) That this Court order the Defendants to pay the Trustee prejudgment interests for damages sustained under Counts III, IV, VIII through X and XXIII;

(i) That this Court order the Defendants to pay the Trustee punitive damages on Counts VIII through XII, XIV and XXIII above to deter the Defendants from similar misconduct in the future;

(j) That this Court order the Defendants to divest themselves of any interest in any real or personal property listed in Count XXI;

(k) That this Court order that all proceeds, assets and/or profits obtained directly or indirectly by the Defendants as a result of their activities described above be held in a constructive trust for the benefit of the Trustee and the Sonic Class Members pursuant to O.C. G. A. §53-12-93, that all such proceeds, assets and/or profits be tendered to the Trustee immediately, and that the Defendants be enjoined from taking any action whatsoever that has the effect of dissipating or encumbering such assets prior to their surrender to the Trustee.

(l) That this Court order the Defendants jointly and severally to pay compensatory damages in an amount equal to the amount the Defendants and the LECs have collected from Sonic Class Members for fraudulent and unauthorized long distance charges, switching fees, late payment for fees or any other fee or charge derived from the scheme, including interest, plus prejudgment interest, costs and attorneys fees;

(m) That this Court enjoin the Defendants from engaging in any future conduct of the nature described herein; and

(n) For such other and further relief as this Court deems just and proper.

Date: April 21, 2004

This 30<sup>th</sup> day of January, 1996.

ALSTON & BIRD

By:

  
J. WILLIAM BOONE

State Bar No. 067856

CANDACE N. SMITH

State Bar No. 654910

ATTORNEYS FOR C. DAVID BUTLER,  
CHAPTER 7 TRUSTEE FOR SONIC  
COMMUNICATIONS, INC.

One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: )  
SONIC COMMUNICATIONS, INC., ) CHAPTER 7  
Debtor. ) CASE NO. 95-64899  
) JUDGE ROBERT E. BRIZENDINE  
)  

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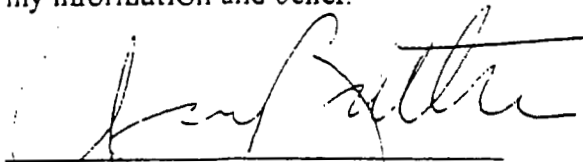
C. DAVID BUTLER, TRUSTEE of the Bankruptcy )  
Estate of Sonic Communications, Inc., )  
Plaintiff, )  
)  
) ADVERSARY PROCEEDING  
) NO: 95-6400  
)  
)  
JOHN S. BUFFA, JUDY ELLEN BUFFA, MICHAEL A. )  
BUFFA, HUGO GALLUZZI, TIMBERLAND )  
CONSTRUCTION SHOWCASE, INC., , EDITH MAIN )  
ANDERSON, CATERINA "CATHY" GALLUZZI )  
BERGERON, SYLVAIN BERGERON, ANTONIO )  
BUFFA, CYNTHIA BUFFA, GRAZIELLA BUFFA, )  
JODY BUFFA, JOSEPH BUFFA, JUAN BUFFA, )  
MICHAEL R. BUFFA, NINO BUFFA, RACHAEL )  
BUFFA, ROSA BUFFA, SANTIAGO "SANTI" BUFFA, )  
VINCENT "VINCE" BUFFA, DAMIAN CIPRIANI, )  
LUIS CIPRIANI, GERI BUFFA CLARY, MARC H. )  
LEWIS, LISA SUTTON BUFFA, JOHN VITALE, JOSE )  
"JOE" VITALE, MARTHA VITALE, AIRPULSE, INC., )  
AMERICA'S TELE-NETWORK CORPORATION, )  
BROOKSIDE COMMUNITY BUILDERS, INC., C & B )  
CONSULTING, INC., C & S CONSULTING, CS )  
SYSTEMS, INC., CS ENTERPRISES, COMPUTER )  
MADRE, DATA TREE, INC., DC COMPUTING )  
SERVICES, INC., GC ACCOUNTING, GRATEFUL )  
DATA, HARBOR MARKETING SERVICES, INC., JCB )  
MARKETING, INC., L.V.C. CONSULTING, INC., )  
MAIN ENTERPRISES, INC. MICHAEL'S WINDOWS )  
AND GLASS DOORS, MICRO CONSULTING GROUP, )  
INC., PERSONAL COMPUTING SOLUTIONS, INC. )  
A/K/A PC SOLUTIONS A/K/A PERSONAL )  
COMPUTING SOLUTIONS, MHL CONSULTING, )  
INC., QBP, INC., SOUTHERN MEDIA SYSTEMS, )  
INC., AND SYMTECH, INC., )  
Defendants. )

VERIFICATION

STATE OF GEORGIA

COUNTY OF FULTON

COMES NOW C. David Butler, who having been duly sworn, deposes and states the following: I am the Chapter 7 Trustee for Sonic Communications, Inc. I have read the above and foregoing Amended Verified Complaint, and know the contents thereof. I have either personal knowledge of the facts contained in the within and foregoing Amended Verified Complaint, or have reviewed the relevant and pertinent business records of Sonic Communications, Inc., kept in the ordinary course of its business on or about the time of the events covered therein, and have reviewed other relevant and pertinent records, and the facts contained in the Amended Verified Complaint are true and correct, to the best of my information and belief.



C. DAVID BUTLER, Chapter 7 Trustee For Sonic Communications, Inc.

Sworn to and subscribed  
before me on this 29<sup>th</sup>  
day of January, 1996



Notary Public Oct. 8, 1995

My Commission Expires  
10/8/96



Date: April 21, 2004

STATE OF FLORIDA

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON



DIVISION OF COMPETITIVE MARKETS &  
ENFORCEMENT  
WALTER D'HAESELEER  
DIRECTOR  
(850) 413-6600

# Public Service Commission

February 20, 2003

**Via Certified U.S. Mail and Facsimile:**  
**(866) 228-9495**

Ms. Margaret Currie  
President  
Miko Telephone Communications, Inc.  
2100 Southbridge Parkway  
Birmingham, AL 35209-1390

**Re: Inquiry into apparent slamming infractions.**

Dear Ms. Currie:

Since July 31, 2002, the Florida Public Service Commission (PSC) has received 39 slamming related complaints from Florida consumers against Miko Telephone Communications, Inc. (Miko). As of today, fifteen (15) of those complaints have been determined to be apparent rule violations by staff. In most of the cases, it appears that the third party verification (TPV) used by your company does not contain all of the information required by Rule 25-4.118, Florida Administrative Code (F.A.C.), Local, Local Toll, or Toll Provider Selection. I have enclosed a copy of the slamming rule for your convenience. I have also enclosed a list of the complaints the Commission received and highlighted the ones that staff closed as apparent rule violations.

Several of the complainants claim that the telemarketer soliciting Miko's services misled them. They claim that they were offered a free promotional calling card or a \$50 check and gave the verifier / telemarketer personal information so that they could receive the promotion. They deny authorizing Miko to switch their service, and a few of the complainants claim that the verification tape Miko played for them has been modified or dubbed.

Ms. Currie, the purpose of this inquiry is inform Miko of this situation and provide your company with an opportunity to look into this matter and correct any problems that are causing the apparent rule violations and excessive number of complaints. Please investigate your company's telemarketing and verification practices and provide me with a written reply no later than March 14, 2003. In your reply, please include the following:

1. A detailed explanation for the recent increase in slamming complaints filed against Miko and why your customers are claiming they were misled during telemarketing.

Date: April 21, 2004

Ms. Margaret Currie

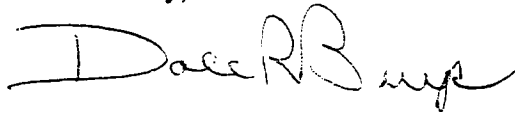
Page 2

February 20, 2003

2. The actions Miko is undertaking to correct any problems causing the apparent slamming violations. Those actions should include any changes in Miko's policies and practices regarding the marketing of its services, obtaining valid customer authorizations, and switching customers' service.
3. A copy of the third party verification script used to verify that your customers have authorized Miko to switch the customers' service provider.
4. A copy of the telemarketing script used to solicit Miko's services to potential Florida customers.
5. The name of the company from which Miko purchases network time it resells to its Florida customers.
6. The name, address, and telephone number of the company Miko uses for its third party verifications.
7. The name, address, and telephone number of each telemarketing company Miko uses to solicit its services, if applicable.

Ms. Currie, based on the complainants' correspondence, it appears that there may be several problems associated with your company's marketing and verification practices. Therefore, I believe it would be beneficial for us to meet at our office in Tallahassee to discuss this matter. I look forward to meeting you and the opportunity to work with your company to resolve this matter. Please call me at your earliest convenience to schedule a meeting. Again, please submit the requested reply to my questions no later than March 14, 2003.

Sincerely,



Dale R. Buys  
Regulatory Analyst  
Bureau of Service Quality

Voice: 850-413-6536

Fax: 850-413-6537

Email: [dbuys@psc.state.fl.us](mailto:dbuys@psc.state.fl.us)

DRB

Enclosures (2)

COMPLAINTS RECEIVED FOR A SINGLE UTILITY

2/17/2003 MIKO TELEPHONE COMMUNICATIONS, INC.

TJ561

RECEIVED BETWEEN 07/01/2002 AND 02/17/2003

CASE NO:	CUSTOMER NAME	DATE REC'D	ASSIGNED ANALYST	DIV.	PRE. TYPE	DUE DATE
480887T	LEDDA LORENZO	07/31/2002	ANGELA HASHISHO PHONE NUMBER: (407)-344-4141	CAF	SLAMMING	08/21/2002
483333T	HECTOR PUIG	08/13/2002	ELLEN PLENDL PHONE NUMBER: (352)-372-4105	CAF	SLAMMING	09/04/2002
498610T	LANCE AHYEE	10/25/2002	JOY ANDERSON PHONE NUMBER: (305)-245-0996	CAF	SLAMMING	11/18/2002
500884T	HECTOR PUIG	11/06/2002	DAN FLORES PHONE NUMBER: (352)-372-4105	CAF	FAILURE TO	12/02/2002
503980T	BUSINESS NAME:GOPE ENTERPRISES	11/22/2002	DAN FLORES PHONE NUMBER: (305)-885-6233	CAF	SLAMMING	12/17/2002
2T	FRANK BATRONIS	12/10/2002	PAMELA BARNES PHONE NUMBER: (352)-483-0901	CAF	IMPROPER	01/02/2003
- 226 - 9T	EVELYN GRAY	12/11/2002	KAULLIS MARSHALL PHONE NUMBER: (352)-347-2841	CAF	SLAMMING	01/03/2003
506608T	ANEIDA ACOSTA	12/11/2002	KAULLIS MARSHALL PHONE NUMBER: (305)-598-2172	CAF	SLAMMING	01/03/2003
507597T	ANAIS BADIA	12/17/2002	KAULLIS MARSHALL PHONE NUMBER: (305)-264-3886	CAF	SLAMMING	01/09/2003
507755T	RAUL ALBA	12/17/2002	PAM BARNES PHONE NUMBER: (305)-884-2875	CAF	SLAMMING	01/09/2003
508034T	IVELISE VELEZ	12/18/2002	KAULLIS MARSHALL PHONE NUMBER: (407)-812-9946	CAF	SLAMMING	01/10/2003
508294T	CARMEN SAUNDE	12/20/2002	SHONNA MCCRAY PHONE NUMBER: (305)-673-1526	CAF	OTHER	01/14/2003
508869T	ANTONIA MARRERO	12/26/2002	SHONNA MCCRAY PHONE NUMBER: (352)-666-3929	CAF	SLAMMING	01/17/2003
508937T	GRETTEL DE LA TORRE	12/26/2002	PAMELA BARNES PHONE NUMBER: (305)-821-8697	CAF	SLAMMING	01/17/2003

Docket Nos. 020645-TJ, 031031-TJ, 040062-TJ, 040289-TJ  
Date: April 21, 2004

Attachment J

CASE NO.	CUSTOMER NAME	DATE REC'D	ASSIGNED ANALYST	DIV.	PRE. TYPE	DUE DATE
510101T	BUSINESS NAME:A CAR 4 U CORP.	01/03/2003	KAULLIS MARSHALL PHONE NUMBER: (305)-635-2507	CAF	SLAMMING	01/27/2003
510289T	VANITA AVILES	01/03/2003	KAULLIS MARSHALL PHONE NUMBER: (305)-545-7525	CAF	SLAMMING	01/27/2003
510547T	MARIANO OYARBIDE	01/06/2003	SHONNA MCCRAY PHONE NUMBER: (386)-789-2758	CAF	SLAMMING	01/28/2003
510660T	LYNETTE JARAMILLO	01/07/2003	CAF PHONE NUMBER: (813)-909-0292	CAF	SLAMMING	01/29/2003
510726T	LUIS AHUMADA	01/07/2003	KAULLIS MARSHALL PHONE NUMBER: (407)-384-6530	CAF	SLAMMING	01/29/2003
510841T	JORGE FERRERO	01/07/2003	DAN FLORES PHONE NUMBER: (954)-704-9110	CAF	SLAMMING	01/29/2003
511250T	ALBERTON FERNANDEZ	01/09/2003	DAN FLORES PHONE NUMBER: (305)-445-8241	CAF	SLAMMING	01/31/2003
-227- T	SARA TIMONEDA	01/14/2003	SHONNA MCCRAY PHONE NUMBER: (305)-649-4372	CAF	SLAMMING	02/05/2003
BT	GUILLERMINA FERNANDEZ	01/14/2003	JOY ANDERSON PHONE NUMBER: (239)-693-7237	CAF	SLAMMING	02/05/2003
BT	RITA DUNAYEW	01/15/2003	SHONNA MCCRAY PHONE NUMBER: (561)-750-2164	CAF	SLAMMING	02/06/2003
513224T	THOMAS BRYANT	01/21/2003	KAULLIS MARSHALL PHONE NUMBER: (561)-691-1396	CAF	SLAMMING	02/11/2003
513527T	MARGARITA HURTADO	01/22/2003	ELLEN PLENDL PHONE NUMBER: (305)-285-1767	CAF	SLAMMING	02/12/2003
513904T	JORGE CALVO	01/23/2003	JOY ANDERSON PHONE NUMBER: (305)-836-6897	CAF	SLAMMING	02/13/2003
514048T	GOLDIE WILSON	01/24/2003	JOY ANDERSON PHONE NUMBER: (352)-383-4901	CAF	SLAMMING	02/14/2003
514160T	HOWARD DEICHERT	01/24/2003	MICHELLE WATSON-LIVINGSTON PHONE NUMBER: (561)-470-9995	CAF	SLAMMING	02/14/2003
514582T	ROBERT ROSADO	01/28/2003	DAN FLORES PHONE NUMBER: (954)-344-2435	CAF	IMPROPER	02/18/2003

Docket Nos. 020645-TI, 031031-TI, 040062-TI, 040289-TI  
Date: April 21, 2004

Attachment J

	CUSTOMER NAME	DATE REC'D	ASSIGNED ANALYST	DIV.	PRE. TYPE	DUE DATE
514687T	RAFAEL GONZALES	01/28/2003	KAULLIS MARSHALL PHONE NUMBER: (305)-634-2902	CAF	SLAMMING	02/18/2003
514823T	SILA BARQUIN	01/28/2003	JOY ANDERSON PHONE NUMBER: (813)-885-6387	CAF	SLAMMING	02/18/2003
514942T	LINDSAY BEHARRY	01/29/2003	SHONNA MCCRAY PHONE NUMBER: (352)-336-4367	CAF	SLAMMING	02/19/2003
514947T	CAMILO CACERES	01/29/2003	SHONNA MCCRAY PHONE NUMBER: (407)-380-9807	CAF	SLAMMING	02/19/2003
515191T		01/30/2003	KAULLIS MARSHALL PHONE NUMBER: (850)-385-5222	CAF	SLAMMING	02/20/2003
515305T	RAFAEL FIGUEROA	01/30/2003	JOY ANDERSON PHONE NUMBER: (305)-856-8744	CAF	SLAMMING	02/20/2003
515638T	GUIDO DE LA OSA	02/03/2003	MICHELLE WATSON-LIVINGSTON PHONE NUMBER: (305)-821-9194	CAF	SLAMMING	02/24/2003
	GILBERT PEREZ	02/12/2003	KAULLIS MARSHALL PHONE NUMBER: (786)-242-1617	CAF	SLAMMING	03/05/2003
		02/13/2003	SHONNA MCCRAY PHONE NUMBER: (352)-489-0954	CAF	SLAMMING	03/06/2003

- 228 -

Docket Nos. 020645-TI, 031031-TI, 040062-TI, 040289-TI  
Date: April 21, 2004

Attachment J

Date: April 21, 2004

**RULE 25-4.118, F.A.C.,  
LOCAL, LOCAL TOLL, OR TOLL PROVIDER SELECTION**

**25-4.118 Local, Local Toll, or Toll Provider Selection.**

(1) The provider of a customer shall not be changed without the customer's authorization. The customer or other authorized person may change the residential service. For the purposes of this section, the term "other authorized person" shall mean a person 18 years of age or older within the same household. The person designated as the contact for the local telecommunications company, an officer of the company, or the owner of the company is the person authorized to change business service. A LEC shall accept a provider change request by telephone call or letter directly from its customers; or

(2) A LEC shall accept a change request from a certificated LP or IXC acting on behalf of the customer. A certificated LP or IXC shall submit a change request only if it has first certified to the LEC that at least one of the following actions has occurred:

(a) The provider has a letter of agency (LOA), as described in (3), from the customer requesting the change;

(b) The provider has received a customer-initiated call, and beginning six months after the effective date of this rule has obtained the following:

1. The information set forth in (3)(a)1. through 5.; and
2. Verification data including at least one of the following:
  - a. The customer's date of birth;
  - b. The last four digits of the customer's social security number; or
  - c. The customer's mother's maiden name.

(c) A firm that is independent and unaffiliated with the provider claiming the subscriber has verified the customer's requested change by obtaining the following:

1. The customer's consent to record the requested change or the customer has been notified that the call will be recorded; and
2. Beginning six months after the effective date of this rule an audio recording of the information stated in subsection (3)(a)1. through 5.; or

(d) 1. The provider has received a customer's change request, and has responded by mailing an informational package that shall include the following:

- a. A notice that the information is being sent to confirm that a customer's request to change the customer's telecommunications provider was obtained;
- b. A description of any terms, conditions, or charges that will be incurred;
- c. The name, address, and telephone number of both the customer and the soliciting company;
- d. A postcard which the customer can use to confirm a change request;

e. A clear statement that the customer's local, local toll, or toll provider will be changed to the soliciting company only if the customer signs and returns the postcard confirming the change; and

f. A notice that the customer may contact by writing the Commission's Division of Consumer Affairs, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, or by calling, toll-free (TDD & Voice) 1-800-342-3552, for consumer complaints.

2. The soliciting company shall submit the change request to the LP only if it has first received the postcard that must be signed by the customer.

(3)(a) The LOA submitted to the company requesting a provider change shall include the following information (each shall be separately stated):

1. Customer's billing name, address, and each telephone number to be changed;
2. Statement clearly identifying the certificated name of the provider and the service to which the customer wishes to subscribe, whether or not it uses the facilities of another company;
3. Statement that the person requesting the change is authorized to request the change;
4. Statement that the customer's change request will apply only to the number on the request and there must only be one presubscribed local, one presubscribed local toll, and one presubscribed toll provider for each number;
5. Statement that the LEC may charge a fee for each provider change;
6. Customer's signature and a statement that the customer's signature or endorsement on the document will result in a change of the customer's provider.

(b) The soliciting company's provider change fee statement, as described in (a)5. above, shall be legible, printed in boldface at least as large as any other text on the page, and located directly above the signature line.

(c) The soliciting company's provider change statement, as described in (a)6. above, shall be legible, printed in boldface at least as large as any other text on the page, and located directly below the signature line.

(4) The LOA shall not be combined with inducements of any kind on the same document. The document as a whole must not be misleading or deceptive. For purposes of this rule, the terms "misleading or deceptive" mean that, because of the style, format or content of the document or oral statements, it would not be readily apparent to the person signing the document or providing oral authorization that the purpose of the signature or the oral authorization was to authorize a provider change, or it would be unclear to the customer who the new provider would be; that the customer's selection would apply only to the number listed and there could only be one provider for that number; or that the customer's LP might charge a fee to switch service providers. If any part of the LOA is written in a language other than English, then it must contain all relevant information in each language. Notwithstanding the above, the LOA may be combined with checks that contain only the required LOA language as prescribed in subsection (3) of this section and the information necessary to make the check a negotiable instrument. The LOA check shall not contain any promotional language or material. The LOA check shall contain in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary carrier change by signing the check. The LOA language shall be placed near the signature line on the back of the check.

(5) A prospective provider must have received the signed LOA before initiating the change.

(6) Information obtained under (2)(a) through (d) shall be maintained by the provider for a period of one year.

(7) Customer requests for other services, such as travel card service, do not constitute a provider change.

(8) Charges for unauthorized provider changes and all 1+ charges billed on behalf of the unauthorized provider for the first 30 days or first billing cycle, whichever is longer, shall be credited to the customer by the company responsible for the error within 45 days of notification to the company by the customer, unless the claim is false. After the first 30 days up to 12 months, all 1+ charges over the rates of the preferred company will be credited to the customer by the company responsible for the error within 45 days of notification to the company by the customer, unless the claim is false. Upon notice from the customer of an unauthorized provider change, the LEC shall change the customer back, or to another company of the customer's choice. The change must be made within 24 hours excepting Saturday, Sunday, and holidays, in which case the change shall be made by the end of the next business day. The provisions of this subsection apply whether or not the change is deemed to be an unauthorized carrier change infraction under subsection (13).

(9) The company shall provide the following disclosures when soliciting a change in service from a customer:

- (a) Identification of the company;
- (b) That the purpose of the visit or call is to solicit a change of the provider of the customer;
- (c) That the provider shall not be changed unless the customer authorizes the change; and
- (d) All information as referenced in Rule 25-24.490(3).

*Rule 25-24.490(3)*

*Upon request, each company shall provide verbally or in writing to any person inquiring about the company's service:*

- (a) any nonrecurring charge,
- (b) any monthly service charge or minimum usage charge,
- (c) company deposit practices,
- (d) any charges applicable to call attempts not answered,
- (e) a statement of when charging for a call begins and ends, and
- (f) a statement of billing adjustment practices for wrong numbers or incorrect bills.

*In addition, the above information shall be included in the first bill, or in a separate mailing no later than the first bill, to all new customers and to all customers presubscribing on or after the effective date of this rule, and in any information sheet or brochure distributed by the company for the purpose of providing information about the company's services. The above information shall be clearly expressed in simple words, sentences and paragraphs. It must avoid unnecessarily long, complicated or obscure phrases or acronyms.*

(10) During telemarketing and verification, no misleading or deceptive references shall be made while soliciting for subscribers.

(11) A provider must provide the customer a copy of the authorization it relies upon in submitting the change request within 15 calendar days of request.

(12) Each provider shall maintain a toll-free number for accepting complaints regarding unauthorized provider changes, which may be separate from its other customer service numbers, and must be answered 24 hours a day, seven days a week. If the number is a separate toll-free number, beginning six months after the effective date of this rule new customers must be notified of the number in the information package provided to new customers or on their first bill. The number shall provide a live operator or shall record end user complaints made to the customer service number to answer incoming calls. A combination of live operators and recorders may be used. If a recorder is used, the company shall attempt to contact each complainant no later than the next business day following the date of recording and for three subsequent days unless the customer is reached. If the customer is not reached, the company shall send a letter to the customer's billing address informing the customer as to the best time the customer should call or provide an address to which correspondence should be sent to the company. Beginning six months after the effective date of this rule, a minimum of 95 percent of all call attempts shall be transferred by the system to a live attendant or recording device prepared to give immediate assistance within 60 seconds after the last digit of the telephone number listed as the customer service number for unauthorized provider change complaints was dialed; provided that if the call is completed within 15 seconds to an interactive, menu-driven, voice response unit, the 60-second answer time shall be measured from the point at which the customer selects a menu option to be connected to a live attendant. Station busies will not be counted as completed calls. The term "answer" as used in this subsection means more than an acknowledgment that the customer is waiting on the line. It shall mean the provider is ready to render assistance or accept the information necessary to process the call.

(13)(a) A company shall not be deemed to have committed an unauthorized carrier change infraction if the company, including its agents and contractors, did the following:

1. Followed the procedures required under subsection (2) with respect to the person requesting the change;
2. Followed these procedures in good faith; and
3. Complied with the credit procedures of subsection (8).

(b) In determining whether fines or other remedies are appropriate for an unauthorized carrier change infraction, the Commission shall consider the actions taken by the company to mitigate or undo the effects of the unauthorized change. These actions include but are not limited to whether the company, including its agents and contractors:

1. Followed the procedures required under subsection (2) with respect to the person requesting the change in good faith;
2. Complied with the credit procedures of subsection (8);
3. Took prompt action in response to the unauthorized change;
4. Reported to the Commission any unusual circumstances that might have adversely affected customers such as system errors or inappropriate marketing practices that resulted in unauthorized changes and the remedial action taken;
5. Reported any unauthorized provider changes concurrently affecting a large number of customers;

or

6. Took other corrective action to remedy the unauthorized change appropriate under the circumstances.

**Specific Authority 350.127(2) F.S.**

**Law Implemented 364.01, 364.03, 364.19, 364**

**History: New 3-4-92. Amended 5-31-95, 7-20**



Date: April 21, 2004

m i k o

February 26, 2003

Dale R Buys  
Regulatory Analyst  
State of Florida  
Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

DIVISION OF  
COMPETITIVE SERVICES

Dear Mr. Buys,

This is in response to your letter dated February 20. I understand your concerns, and this is why Miko has decided to stop marketing in the state of Florida at this time. Miko is working on a better monitoring system to avoid any miscommunication with consumers.

1. Miko Telephone Communications, Inc. has answered all the complaints presented by the State of Florida. Miko is not at fault for slamming if the consumer does not remember the telemarketing call. Miko has verifications on all customers. Therefore, Miko has no slamming complaints.
2. Even though Miko believes there were no slamming complaints. Miko has stop marketing in the state of Florida at the present time.
3. This Verification Script has been change as of January 2003 to comply with your regulations - Attached.
4. Telemarketing script - Attached.
5. Global Crossing is the company that Miko resells for
6. The verification company is: FVC, Inc. Alpharetta, GA 30022, 888-588-7058.
7. Miko has in house telemarketing.

I hope that you find these answers satisfactory.

Sincerely



Margaret Currie  
President

**Untitled**

***Thank you for choosing MIKO communications. This verification process will confirm some basic information on your account and will only take a moment.***

***After the tone, please say you name, address and telephone number including the area code.***

***Are you the person authorized to make changes to your long distance service and are you over 18 years old? Please say yes at the tone.***

***Do you understand that your current long distance service will be changed to MIKO Communications INCLUDING interstate, intrastate, AND international calling? Please say yes at the tone.***

***Please state you date of birth or you mother's maiden name after the tone.***

***Thank you for your order. You will soon recieve a welcome package in the mail. Be aware that some local companies may charge a switching fee for your new service. This is refundable by MIKO communications.***

## Miko Telemarketing Script

Hello, Mr. / Mrs. \_\_\_\_\_.

My name is \_\_\_\_\_ and I'm from Miko Telephone Communications, Inc., a telecommunications service provider certified and regulated by the FCC and the various state commissions. Are you the person authorized to make changes to and /or incur charges on this telephone account? *(If the answer is "No". Tell the person you'll call back and terminated the call)*

This call is to introduce you to Miko's Telephone Communications. A long distance company with great rates. Our customers use the same network that many other companies use. Miko's underlying carrier is Qwest.

All state-to-state calls are 6.9¢ a minute night time and 13.8¢ day time, every day with only a small monthly fee of \$4.95 and a one-time setup fee of \$6.00. For your convenience our charges will be listed in your telephone bill that you receive from your local phone company, but we are not affiliated.

Should you have any questions or want to cancel the service just call Miko's Customer Service toll free number 866-705-3082. If you're interested in this offer, and would like to give us a try, I need to get some information from you to transfer your service.

May I have your full name \_\_\_\_\_?  
And your mailing address \_\_\_\_\_.  
Your main billing telephone number is \_\_\_\_\_.

There may be a small fee of approximately \$5 from your local carrier for switching your services. Also, your local carrier will have an additional small fee of approximately \$5 for each line you switch, just call our customer service department and we will refund any fee you incurred by choosing our services.

For verification purposes could I have your date of birth \_\_\_\_\_?  
(If date of birth indicates person to be younger than 18, terminate the call. Do not continue with verification)

To comply with federal and state regulations, I'm going to transfer you to an independent verification company. This verification will be recorded. The Verification Company uses automated means to speed the process, and will confirm our discussion. When you're connected, you will be asked to personally confirm your selection of Miko, as your telecommunications service provider for all of your long distance communications needs. No change will be made to your local services. Just follow the prompts. Before I connect you to the verification, I would like to thank you for your patience and interest in Miko. Where we work hard to satisfy your needs.



**CAMARA DE COMERCIO LATINA DE MIAMI BEACH**  
**LATIN CHAMBER OF COMMERCE OF MIAMI BEACH**

NON-PROFIT ORGANIZATION / ORGANIZACION NO LUCRATIVA

SERVICES: Business Development, Advocacy, Tourism, Employment, Internet Exchange

*"It's not the Origin... It's the Originality!" ORIGINAL*



February 20, 2003.

Florida State Public Service Commission  
Re: Case # 518568C – Slamming Investigation  
Against: Miko Communications, Inc. - Owner: Carlos Vivanco  
1 Chase Corporate Drive, Suite 490, Birmingham, Alabama 35244-1000

Fax Communique: 1-800-511-0809

Dear Public Service Commission:

This is to formally report to you a complaint against Mikko Communications, Inc. regarding their "slamming" long distance practices, having "taken over" my telephone account (305) 674-9247 without my authorization and with illegal intent, when I already had AT&T as my long distance provider.

I am formally requesting via telephone, letter and fax communication that they return all the monies that Bell South collected from me and paid to them for long distance services, since December through February 20th, 2003. I already had AT&T. They were not called upon, nor authorized to provide me with any services at all! Bell South has already been informed and I seek your assistance to inform you of their illegal take over my telephone account.

They have caused me such confusion and problems with my telephone account payments, having taken advantage of the fact that I didn't have a "freeze" on my line when they took over my line illegally and without my authorization back in December. They are re-sellers of Global Crossing.

I requested an investigation and have a case number assigned to further look into this serious matter. This company is such a scam that I hope you take this case to its fullest extent. When I contacted them to inquire how they dared take over my line without authorization, the first time they hunged on my face, the second time Carolina informed me that the system was down and was unable to produce a taped recorded approval from me (I don't know how they are going to produce something that doesn't exist!) and their supervisor was hesitant to give me the address of the executive offices, turning me to another address.

I have requested them to produce their bogus recording of "my acceptance" (they claim they have one!) and will insist that they get fined the maximum amount. I am the only person authorized in my house to decide on telephone service needs and would not be surprised if they created fake and bogus tapings with telemarketing scams. They may have hunged up the phone on my face and get away with that, but they can't do that to the FCC and the Public Service Commission. I demand that they remove themselves from my account and return my monies. That is theft! Thank you very much for your assistance. My daytime telephone is (305) 674-1414.

*Gracc Calvani*  
Gracc Calvani

*"Seguimos Creciendo" - South*

*Le Beach • North Beach*



**CAMARA DE COMERCIO LATINA DE MIAMI BEACH**  
**LATIN CHAMBER OF COMMERCE OF MIAMI BEACH**

NON-PROFIT ORGANIZATION / ORGANIZACION NO LUCRATIVA

SERVICES: Business Development, Advocacy, Tourism, Employment, Internet Exchange

*"It's not the Origin... It's the Originality!"*

788 20 00



February 20, 2003.

Florida State Public Service Commission

Fax Communiqué: 1-800-511-0809

Re: Case # 518568C – Slamming Investigation - Grace Calvani, 305-674-9247  
Against: Miko Communications, Inc. - Owner: Carlos Vivanco  
1 Chase Corporate Drive, Suite 490, Birmingham, Alabama 35244-1000

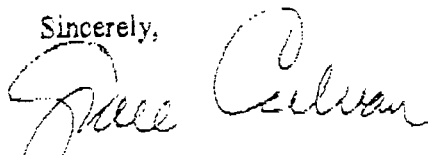
Dear Public Service Commission:

This is a quick follow up to inform you that shortly after sending you the first letter by fax today, Miko Communications Inc., called me to inform me that they had a taped recording of "my acceptance" to have their long distance services, as proof of their authorized services. Their so called recording is not my voice, nor it's my authorization. On their recording, a frequently interrupted taped conversation picks up a Miko rep urging Maria Salichs, my mother and senior citizen, to confirm information about me. They took this conversation as authorization to take over my account. My mother is not the account holder, doesn't live in my house, she was simply engaged in conversation when she answered the phone, and who knows how they tricked into to get her to confirm information about me. Without my own authorization and with their illegal intent, they claim that since I didn't have a "freeze" on my line, they were entitled to take that conversation with my mom as authorization.

I am formally requesting to your agency to acknowledge that my decision as account holder is the only valid one, and that all the monies that Bell South collected from me and paid to Miko for long distance services, since December through February 20th, 2003 be credited back to me. I already had AT&T. They were not called upon by me, nor authorized by me to provide me with any services at all! They conducted an illegal process by engaging my senior mother in conversation and give personal information about me. The conversation is in Spanish.

I will appreciate that you pursue my case with Miko Communications and enter into my record that I did not approve at any time switching to their company. Their recording is a bogus tape that entraps a person who happens to answer the telephone, not me, the account holder. I demand that they remove their charges and services, I did not approve of it. That is theft! Thank you very much for your assistance. My daytime telephone is (305) 674-1414.

Sincerely,

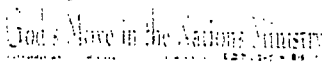
  
Grace Calvani

*"Seguimos creciendo" - Saw*

- 236 -

Beach & North Beach

Date: April 21, 2004



God's Move in the Nations Ministry

April 30, 2003

Reference: Long Distance Charges to Telephone (954)427-7669

To Whom It May Concern:

I, Pastor Amancio G. Dias, am a missionary Pastor living in South Florida. On the month of February of 2003, I received a call from a sales representative of your company. I was offered by your representative a gift of one free 100 minute long distance calling card for a trial. I was asked to accept the gift without any obligation by the agent. After my acceptance, the agent told me that I had to confirm the acceptance by saying yes, my name and my phone number. A recording was played, I felt confused initially, because I was talking with a person than a machine came on. The recording paused at different time for me to say 'yes, my name and phone number. But since I had spoken with the representative before where I felt comfortable with what I was being offered , I knew that I would be confirming what was offered to me before which the representative made clear to me what your company was promising me. I have a witness whom heard all the conversation on speakerphone when your representative offered a free 100 minute long distance telephone card as a trial.

I never received this 100 minute long distance calling card which was promised to me as a trial. Instead, I began to be billed by your company for calls that I made which was previously covered by the plan of my Local carrier which is Bellsouth. Does it make sense for anyone who is receiving a service at no additional cost, to change that same service by free will for a paying service? How can anyone accept a service without being disclosed the amount of the same? I chose the plan with Bellsouth, because as a Pastor I give Pastoral counseling over the phone requiring me to speak to many people at different cities for lengthy periods.

Although there was a cancellation for services of my Local Carrier which I never authorized by free will, and Miko Telefonica began to provide the services which was not what was offered to me. I, Pastor Amancio G. Dias agree to pay the difference that my Local Carrier Bellsouth would charge me for these calls under a plan with long distance which I had before your cancellation from a plan without long distance calls by Bellsouth. This difference is \$18.00 plus F.C.C imposed taxes (Eighteen Dollars). I request that your company make the necessary adjustments and notify our Local Carrier and myself about these changes within a 5 day period after receiving this letter. Enclosed you will find copies of my telephone bills where you will be able to see the amount stated above.

Sincerely,

Pastor Amancio G. Dias - President

Deacon Carlos Santos - International Managing Director (Translator for this Letter)

Date: April 21, 2004

From: contact@psc.state.fl.us  
Sent: Wednesday, December 18, 2002 1:48 PM  
To: contact@psc.state.fl.us  
Subject: E-Form Slamming - 5904

ORIGINAL

**TRACKING NUMBER - 0005904 December 18, 2002**

**SERVICE ADDRESS**

Account Number: 40781299466863149  
Business Account Name:  
Name: Ivelise Velez  
Address: 1745 Bridgeview Circle  
City: Orlando  
Zip: 32824  
County: ORANGE  
Service Phone: 407-812-9946

**CUSTOMER INFORMATION**

Name: Ivelise Velez  
Address: 1745 Bridgeview Circle  
City: Orlando  
State: FL  
Zip: 32824  
Primary Phone: 407-812-9946  
E-mail: cardec@netscape.net  
Contact By: Email Address

**COMPLAINT INFORMATION**

Utility Name: TJ561 Miko Telephone Communications, Inc.  
Did customer previously contact the utility?: December 18 2002 The person identified too quickly and then just played the recording. This is a planned scam.  
Did customer previously contact the PSC?:

**PROBLEM INFORMATION**

Problem Type: Slamming  
Complaint Detail:

Local telephone company: Bell South

Interexchange/Long Distance Telephone Company:

The following service(s) were switched without my authorization or request: interstate

Have you contacted your preferred carrier to switch back? Yes

Have you received a bill from the new carrier? Yes

**Complaint Details:**

This company is making telemarketing phone calls and then using the information they are collecting to scam. They are taking advantage of people whose native language is not English to scam them. I called the company and they are playing the information back in pieces so that it sounds like the person was answering the questions when in fact the information was requested as part of a different conversation. I have already requested that the LD company is changed back to ATT, but would like to avoid this company continuing to take advantage of people. I recommend you require the local companies explain the option of freezing changes in LD when an account is opened. I have been amazed about how little the phone companies want to interact directly with the people- they want to do everything over the phone. This creates many opportunities for this types of scams- for which they do not feel they have any responsibility. The phone is 407-812-9946. The account is under the name Evelise Velez. The scam was made October 31 and then changed again november 22 to ATT - for some reason they moved back to the original provider. Consumers need more support from you on these issues also.

ORIGINAL

**For PSC Webmaster Use Only:**

Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; YComp 5.0.2.6)  
<http://www.psc.state.fl.us/consumers/complaint/review.cfm>  
[www.psc.state.fl.us](http://www.psc.state.fl.us)



Date: April 21, 2004

From: Luis Ahumada [lahumada@praxes.com]  
Sent: Monday, January 06, 2003 8:52 PM  
To: contact@psc.state.fl.us  
Subject: Victim of Slamming

- September Bill.pdf
- October Bill-1.pdf
- October Bill-2.pdf
- October Bill-3.pdf
- October Bill-4.pdf
- November Bill-1.pdf
- November Bill-2.pdf
- November Bill-3.pdf
- November Bill-4.pdf

Dear Sir or Madam:

I am submitting a complaint to your email due to the fact that the florida website doesn't work and want to have somebody look at my charges. I was slammed by Miko Telephone Company. The following is the detailed list of questions that one must answer in order to get it resolved.

**Your name, address and phone number**

Luis A. Ahumada  
1103 Landale Ct  
Orlando, FL 32828

**phone number that was slammed**

407-384-6530

**your email address**

lahumada@praxes.com <mailto:lahumada@praxes.com>

**name of the phone company that slammed you**

MIKO TELEPHONE COMM., INC

**name of your authorized local phone company**

BellSouth

**name of your authorized long distance company**

DT Corporation

**a complete statement of the facts**

Apparently sometime in August my mother received a phone call about a telephone company. She only remembers something about a promotion and assures me that she didn't authorize any changes. She is a senior citizen and does not have good memory.

I didn't realize that I was switched until november/december. I had to move temporarily to Washington DC to find a job. After calling BellSouth and asking for advice, I decided to visit the FCC website and armed my self with information. I called Miko Telephone company and asked them for a copy of the conversation. After listening to it, I conclude that the tape sounds very funny and overlaid. As if the questions that were asked were tailored to overlay a conversation about accepting the change in long distance. The recording would have been very difficult to dispute except that when my mother was asked (according to the tape) if she authorized the change, she couldn't understand and said "Uhhh --- Hellooo". The customer agent then instead of repeating the question, just repeated her name to which she answered "yes". My interpretation of that answer was that she said "Yes, that's my name" not "Yes, I authorized the change". But regardless of the interpretation, it is very inconclusive. I believe they scam people to accept this, they should be investigated!

**COPIES of your phone bill showing the charges that you are disputing**

(Important: if you file using e-mail, your bill must be attached, electronically, to your e-mail.

Otherwise, you must file by letter and attach paper copies of your bill)

Please see attached files

**whether or not you have paid any of the disputed charges**

no I have not paid any.

**the specific relief that you want.**

Date: April 21, 2004

All I want is to pay my re-rated bill at the cost of IDT and have the charges taken off my account. I did my own calculation and I have to pay only \$119.21 (which takes out the month of September, and any charges of 1min - which never went through but they still charged. My idt rates are \$.05 with the USA and \$.18226 to Colombia.

How do I solve this? BellSouth, IDT nor Mike are taking any action.

Regards,

Luis A. Ahumada  
(321) 217-5865

March 4, 2003

Florida Service Public Commission  
Consumer Services  
2540 Shumard Oak Blvd.  
Tallahassee, Fla. 32399-0850

UNRECORDED

RE: MIKO TELEPHONE COMM., INC.

Dear Sir:

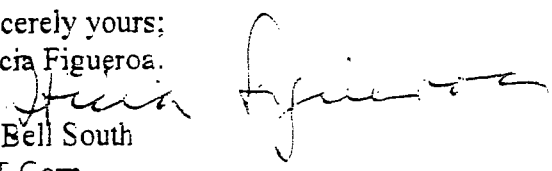
I am directing this letter to your attention to inform you of the deceptive and questionable practices used by the above referenced company for the purpose of "slamming" customers from one provider to another. In this particular situation I use Bell south to provide my local telephone service, and I utilize IDT Corporation out of Newark, New Jersey for my long distance service. I have been their customer for many years.

During the month of December 2002 I received a telephone call from a person requesting verification of my name, address, and to provide them with my date of birth, and some additional personal information. Not having been provided with the reason for this request, I advised this individual that such information was personal confidential information that I was not willing to reveal, and I preceded to hang up.

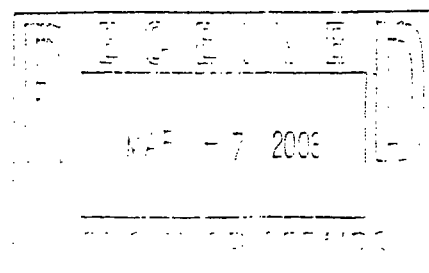
Upon receipt of my January telephone bill from Bell South, I was surprised to find out that my long distance carrier had been switched to MIKO TELEPHONE COMM., INC a company that at no time had been authorized to handle my long distance service. I proceeded to contact Bell South to alert them of the above, and I express my objection to having been "slammed" by this company, and that I was not willing to pay for higher priced services that I had **not** authorized. I tried to contact MIKO TELEPHONE COMM., INC. to alert them of the above, however, ILD TELESERVICES INC. refuses to provide an address where to send them a copy of this complaint.

In view of the above, I am here requesting your assistance in resolving this matter, and to help me preserve my personal rights as a customer, and the telephone service that I have enjoyed for many years. I am also here strongly objecting to the deceptive questionable tactics used to switch my telephone service.

Sincerely yours;  
Alicia Figueroa.



Cc Bell South  
IDT Corp.  
(2) Bills attached.



Mico Communications, Inc.  
2100 S. Bridge Parkway, Suite 650  
Birmingham, Alabama 35209  
Re: 321-259-7342-783-3142  
4/11/03

Jessy Woolstencroft  
3024 Savannah Way # 104  
Melbourne, Florida 32935

I am writing in response to a bill that has appeared on my Bellsouth phone bill and use this method to inform you that I dispute these charges in their entirety.

I plan on filling a complaint with the FCC and the Florida Utilities Commission and ask them to investigate what I consider to be fraudulent activities on the part of Mico Communications and ILD.

I base the complaint on a fact that I received an unsolicited phone call, where I was asked some questions by a personable solicitor. I tried to be polite during my conversation. We spoke at some length about different issues. The solicitor finally asked the question that he was interested in: Do you want to try another long distance carrier? My answer was clear and undeniable: "NO."

The solicitor persisted in trying to persuade me to change over. I explained to him that I had been with Sprint for many years and was pleased with their honesty and courtesy, and that under no circumstances would I change.

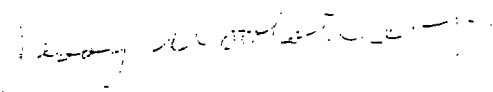
At some time later we came to realize that we had been slammed by a company called ILD. My husband and myself had not linked the two events, until my husband called Mico Communications and told me that he had heard a voice recording of me accepting to be switched over to ILD. I could not believe what I heard.

I am writing to tell you that at no time did your solicitor tell me that he was recording the conversation. I NEVER accepted to be switched to your company. The only thing that I can assume, is that you created the voice recording that my husband heard by editing the conversation that you recorded without my permission.

I refuse to accept any responsibility for the bill that you claim I owe you, and will not pay one cent of it, regardless of what you do. I will fight you every inch of the way, to wherever you want to take this thing.

I believe that the Corporate Executives of Mico Communications, ILD, those that create the policies, that have caused me to have this unwanted problem: are the lowest forms of life that exist on this planet. You are rip-offs running a scam. You should be in jail, and I truly hope that someday you make it. You will never have my business.

Jessy Woolstencroft 4/11/03



ORIGINAL

Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850  
Complaints Dept. Re: Mico Communications  
Case file # 321-259-7342-783-3142

Jessy Woolstencroft  
3024 Savannah Way # 104  
Melbourne, Florida 32935  
4/11/03

APR 14 2003

Dear Sir / Madam:

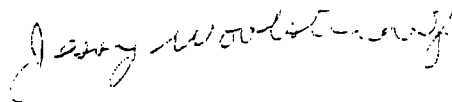
I would like to file a complaint regarding the above mentioned company an case number. I enclose a disclaimer letter that I sent to Mico Communications. I think you will be able to draw all the information that you need from the same letter.

I cannot explain how these people produced the tape recording that my husband had replayed to him over the phone. He told me that it was definitely my voice that he heard.

I am a 42 year old woman with complete and normal use of all my faculties; and I know that I never authorized the transfer of my long distance service to Mico/ILD. As I explain in my letter, I have been with Sprint Long Distance for many years, because I have always been treated in a very courteous and professional manner, and I like their rates. I would never leave Sprint for an unknown company.

As far as I am concerned, I have been slammed, and if the State of Florida has laws on the books regarding this type of behavior, then I would like to insist that you fulfill your mandate, and apply the law to it's fullest extent.

Thank You;



Jessy Woolstencroft



Date: April 21, 2004

UNDERScore HERE THAT AT NO POINT IN TIME DURING THAT CALL DID THE "BITCH-MAN" EVER REPRESENT TO MY WIFE THAT SHE WAS AGREEING TO SWITCH LONG DISTANCE CARRIERS! Indeed, if asked, my wife would tell you that she would not have agreed to changing long distance carriers without discussing it with me first and obtaining my approval. Indeed, the telephone service is in my name, not my wife's.

I asked to speak with a supervisor about the foregoing. I spoke with "Mauricio." He would not give me his last name, but he said he was representative number 917. He refused to credit the \$22.21 because they had obtained our approval. At that time, I advised him that I had informed Bell South of the foregoing events and disputed the charges. I further advised him that Bell South instructed me not to pay same and that they would follow up with Miko. Finally, I advised him that I thought that perhaps they had some kind of fraudulent scheme mislead consumer into thinking they were only agreeing to a FREE long distance card when/ again via fraud by altering the audio tape, change their long distance carrier. To that end, I advised him that I would be filing a complaint with your agency to investigate the foregoing.

ORIGINAL

What Would Satisfy Your Complaint?:

First, I want them to formally credit my account the \$22.21 they improperly and without authorization charged to my account.

Second, I would like your agency to further investigate this matter. If indeed there is a fraudulent scheme, I would like to see such an entity out of business and criminally prosecuted.

Do you authorize DOACS to send a copy of complaint to the business you are complaining against or any other government agency for purposes of mediation, investigation or enforcement?: Yes

Have you read 'FALSE OFFICIAL STATEMENTS' provided in the Florida Statutes?: Yes

Have you read the paragraph regarding the role of the Department of Agriculture and Consumer Services in providing assistance to you?: Yes

Signature: Orlando Cabeza  
Date of Signature: 12/18/02  
E-mail Address: odchoop@yahoo.com

Message created by DOACS Consumer Complaint Web Form on Dec 18, 2002.

**COMPLAINTS FOR WHICH MIKO FAILED TO PROVIDE A TPV**

	<b>CATS NO.</b>	<b>CUSTOMER NAME</b>	<b>BTN</b>
1	506549	Evelyn Gray	352-347-2841
2	510289	Vanita Aviles	305-545-7525
3	510547	Mariano Oyarbide	386-789-2758
4	510660	Lynette Jaramillo	813-909-0292
5	515191	Harvey Joel Goldman	850-385-5222
6	517387	Gilbert Perez	786-242-1617
7	523466	Fredy Urias	561-998-8197
8	527895	Mario Suarez	239-594-0305
9	528575	Oscar Dominguez	305-226-5399
10	528632	Alexis Perales	561-627-8122
11	530254	Gilberto Davila	305-819-1802
12	532783	Alfanzo Colon	407-645-0441
13	534275	Mike Hernandez	305-285-4349
14	536617	Oscar Agudelo	813-908-5726
15	539774	Rosa Marrero	407-422-2440
16	540017	Deardee Proenza	305-552-6072
17	540856	Raul Paredes	305-577-4058
18	543061	Benigno Pesantes	305-387-3865
19	544466	Robert Marco	305-386-9358
20	545608	Lynette Jaramillo	813-909-0292
21	546262	Jose Fernandez	305-256-9732
22	546271	Roger Lcanbalceta	305-274-2297
23	547033	Juana Rodriguez	305-538-0180
24	565204	Luis Arcos	305-270-2021



**COMPLAINTS FOR WHICH MIKO FAILED TO INCLUDE  
ALL THE REQUIRED STATEMENTS ON THE TPV**

	<b>CATS NO.</b>	<b>CUSTOMER NAME</b>	<b>BTN</b>
1	480887	Ledda Lorenzo	407-344-4141
2	483333	Hector Puig	352-372-4105
3	498610	Lance Ahyee	305-245-0996
4	506608	Aneida Acosta	305-598-2172
5	506980	Gope Enterprises / Yadi Vargas	305-885-6233
6	507597	Anaiz Badia	305-264-3886
7	507755	Raul Alba	305-884-2875
8	508034	Ivelise Velez	407-812-9946
9	508294	Carmen Faunde	305-673-1526
10	508869	Antonia Marrero	352-666-3929
11	508937	Grettel De La Torre	305-821-8697
12	510101	A Car 4 U Corp. / Tracy Aldridge	305-635-2507
13	510726	Luis Ahumada	407-384-6530
14	510841	Jorge Ferrero	954-704-9110
15	511250	Alberton Fernandez	305-445-8241
16	512241	Sara Timoneda	305-649-4372
17	512265	Guillermina Fernandez	239-693-7237
18	512643	Rita Dunayew	561-750-2164
19	513224	Thomas Bryant	561-691-1396
20	513527	Margarita Hurtado	305-285-1767
21	513904	Jorge Calvo	305-836-6897
22	514048	Goldie Wilson	352-383-4901
23	514160	Howard Deichert	561-470-9995
24	514687	Rafael Gonzales	305-634-2902
25	514823	Sila Barquin	813-885-6387
26	514942	Lindsay Beharry	352-336-4367
27	514947	Camilo Caceres	407-380-9807
28	515305	Rafael Figueroa	305-856-8744
29	515638	Guido De La Osa	305-821-9194
30	517597	Camilo Cartagena	352-489-0954
31	518589	Luis Manuel	727-343-2812
32	518736	Grace Calvini	305-674-9247
33	518879	Mariann Barry	727-559-0474
34	518918	Orlando Cabeza	305-663-5412
35	519701	Pam Durham	941-493-6365
36	519914	Alberto Rojas	954-423-9024
37	520675	Adam Segan	305-820-8392
38	520833	Ana Salas	305-441-0330
39	520962	Ray & Martha Jones	850-622-1070
40	521009	Ariel Rodreguez	305-823-0120
41	521069	Marta Coca	305-264-0772
42	521163	Alicia Figueroa	305-221-4879
43	521167	Michelle Hernandez	407-260-6919
44	521956	Dulce Rosas	305-884-0459

**COMPLAINTS FOR WHICH MIKO FAILED TO INCLUDE  
ALL THE REQUIRED STATEMENTS ON THE TPV**

	<b>CATS NO.</b>	<b>CUSTOMER NAME</b>	<b>BTN</b>
45	521966	Ignacio Fermin	954-597-8799
46	522325	Helen Hatchett	850-907-9375
47	522543	Charo Mata	954-442-4570
48	522798	Robert Durant	305-364-0999
49	522907	Manuel Oliver	386-789-2142
50	523801	Cecilia Sarmiento	954-370-3958
51	526784	Margarita Cruz	407-281-1807
52	526804	Bonnie Losak	305-866-6133
53	526882	Dawn Taylor-Church	407-896-2152
54	526916	Clifton & Bet Lawton	407-891-1573
55	527129	Alvaro Cabrera	305-662-9910
56	527272	Francisco Erbiti	305-826-5637
57	527277	Mario Diaz	305-595-6888
58	527310	Marienela Armada	305-856-6541
59	527763	Jessy Wollstencroft	321-259-7342
60	527943	Yolanda Negron	305-235-3454
61	528348	Michael Wald	954-986-0201
62	528460	Melba Jimenez	305-264-6576
63	528760	Jim Davis	305-872-9494
64	528855	Humberto Valladares	305-383-2487
65	529134	Marb Maracallo	954-752-5275
66	529201	Marta Baez	407-977-3789
67	529314	John O'Connell	352-666-5840
68	529551	Juliana Fresno	305-385-1302
69	529985	Francisco Turrillo	305-884-2167
70	530376	Carmen Valiente	305-443-4536
71	530428	Lucio A. Rodriguez	305-856-7760
72	530798	Ruth Santiago	305-271-0709
73	531521	Jacqueline Machado	305-625-5849
74	531522	Roberto Duarte	305-266-1084
75	531639	Maria Calderin	305-551-7252
76	531751	Lifeng Xiang	407-673-1628
77	531879	Miguelina Pena	305-681-7902
78	532297	Aida Comins	305-538-2676
79	532311	Rudesinda Arregui	305-532-5748
80	532329	Oscar Canas	305-373-2461
81	532587	Edith Campins	386-447-1838
82	533133	Tania Faife	305-868-1527
83	533323	Juan M. Luis	305-643-9083
84	533499	Mark Benevento	954-522-6969
85	533624	Castro Fernando	561-744-3575
86	533643	Helen Wutke	850-243-8963
87	534590	Malena Marcano	305-538-5103
88	534956	Eneolio J Beruvides	305-220-9487

Date: April 21, 2004

**COMPLAINTS FOR WHICH MIKO FAILED TO INCLUDE  
ALL THE REQUIRED STATEMENTS ON THE TPV**

	<b>CATS NO.</b>	<b>CUSTOMER NAME</b>	<b>BTN</b>
89	534966	Paula Dadone	305-949-0453
90	535297	Laurie & Fernand Zapata	561-488-7345
91	535455	Luciana M. Garcia	305-267-7942
92	536188	Donald Beach	941-475-0657
93	536682	Maria Betancourt	305-551-8124
94	536948	Maria Morales	305-264-4319
95	538563	Libarda Barrero	305-625-6296
96	539082	Joseph Pagan	386-532-0075
97	540560	Conception Lorenzi	863-427-2073
98	541037	Tatiana Ruiz	305-255-4030
99	541294	Raul Torres	305-861-7848
100	541492	Isabel Brito	305-642-8519
101	541864	Manuel Perez	305-866-8451
102	542590	David Oliver	305-866-9204
103	542685	Jose Garcia	305-545-6985
104	542747	Estela T. Delgado	305-827-6494
105	543416	Carmen Bonell	305-861-2863
106	544206	Amancio G. Davis	954-427-7669
107	544955	Francisco E. Bahamonde	305-383-7264
108	545727	Maria Maz	305-586-4167
109	546460	Jose Reyes	863-984-3365
110	546804	Mark Davis	352-542-2621
111	548501	Charles Destro	727-781-8824
112	549097	Jose Abrego	813-231-5808
113	549534	Luis Rivera	407-344-3563
114	550042	Alba Acosta	305-228-1991
115	550474	Carmen Roman	813-996-9545
116	550949	Dalia Navarro	305-888-5948
117	551086	David Sotomayor	813-962-2078
118	551440	Tami Daughtry	386-935-2159
119	551646	Cletus Hamrick	813-839-8631
120	552757	Ana D. Villar	305-944-8634
121	552767	Martha Duncan	863-635-2652
122	554333	Rene & Erika Zayas	305-553-5607
123	554794	Randolph Gray	850-973-3439
124	556568	Enexis Medina	239-774-5831
125	557258	Nora Lopez	305-262-7648
126	559270	Alexandra Martinez	813-932-2635
127	559751	Ruben Marinez	954-441-0465
128	560598	Jazz Irizarry	863-686-2492
129	565220	William & Lucy Bailey	386-328-6485
130	565974	Iris Ortiz	305-252-9817

**COMPLAINTS FOR WHICH NCT FAILED TO PROVIDE A TPV**

	<b>CATS No.</b>	<b>Customer Name</b>	<b>BTN</b>
1	561034	Irma Heimgaertner	239-368-1462
2	574332	Alfredo Marrero	561-642-4921
3	565319	Paul & Marian White	813-985-8397
4	564063	Premier Telecom, Inc.	954-784-6618
5	563489	Helen Dykas	561-967-1912
6	562120	Shannon Plichta	850-936-9060
7	564454	Joseph Royals	850-469-1101
8	557995	Odalis Acosta	813-890-8312
9	555995	Nora Moreno	813-899-9392

**COMPLAINTS FOR WHICH NCT FAILED TO  
INCLUDE ALL THE REQUIRED STATEMENTS ON  
THE TPV**

	<b>CATS No.</b>	<b>Customer Name</b>	<b>BTN</b>
1	565291	Adolfo Castela	727-736-8440
2	572851	Marta Bulnes	813-884-7387
3	555565	Helen Kepler	727-393-8299
4	559239	Juan Ramirez	813-350-0861
5	563690	GM Selby & Associate	305-666-6371
6	574615	Rafael Vallejo	305-893-0558
7	571367	Pamela Hausknecht	407-208-1214
8	572201	Maria Jenkins	772-563-4914
9	555451	Lydia Ruiz	813-948-7717
10	569462	Natasha Deltoro	813-221-3552
11	568180	Jorge Vivar	305-826-0770
12	560085	Johanna Nunez	813-888-6280
13	566915	Anado Batista	561-642-4947
14	566155	Roberto Maseda	305-266-1600
15	560469	Miguel Caban	813-622-7578
16	577411	Guillermina Ramirez	813-871-3710
17	578280	Juan Suarez	321-733-7836
18	578509	Loius Marquez	727-861-2445
19	579164	Azalez Fonseca	863-984-0931
20	579238	Anelo La Rosa	813-988-1576
21	580001	Juana Luya	813-884-5775
22	582162	Elizabeth Garcia	305-944-5396
23	583203	Maria C. Marin	305-825-4237
24	583230	Carmen Ramos	813-948-7931
25	584042	Jazz Irizarry	863-686-2492
26	585874	Oscar Gomez	941-358-6188
27	586611	Gladys Cruz	954-456-1298

**COMPLAINTS FOR WHICH NCT CLAIMS THE  
CUSTOMER WAS TRANSFERRED FROM MIKO**

	<b>CATS No.</b>	<b>Customer Name</b>	<b>BTN</b>
1	567027	Alicia Figueroa	305-221-4879
2	556390	Terry Dunphy	727-398-3494
3	557394	Michelle/Roland Hernande	407-260-6919
4	553084	Germinado Mosquera	305-652-8634
5	558324	Frank Accurso	813-839-7792
6	583301	Joseph Cardenas	904-287-9159

Date: April 21, 2004

October 31, 2003

Florida Service Public Commission  
Consumer Services  
2540 Shumard Oak Blvd.  
Tallahassee, Fla. 32399-0850

NOV - 5 2003

RE: NEW CENTURY TELECOM.

Dear Sir:

I am directing this letter to your attention to inform you of the deceptive and questionable practices used by the above reference company resulting in the "slamming" of customers between telephone service providers. In this particular situation I have been a customer of Bell South, for many years, and I utilize IDT Corporation of Newark, New Jersey for my long distances services.


I am here attaching copies of my long distance monthly statements from Bell South, which clearly indicates that a company by the name of NEW CENTURY TELECOM is now providing long distance services. This new provider is now billing me for more expensive long distance services that I have not requested nor authorized.

Due to a prior similar situation with another company I was instructed by your department to request a "PC (preferred/carrier) Freeze from Bell South to prohibit future changes to my service, however, the steps I took have failed, and I have once again been "slammed" and not prevented switching of services from taking place.

In view of the above, I am here requesting your assistance in resolving this matter, and to help me preserve my personal rights as a customer, and to maintain the telephone services that I have chosen and enjoyed for many years. I am here strongly objecting to the deceptive and questionable tactics used by the above provider attempting to force their services upon the general public.

If you need further information from me please call me at (305) 221-4879, and I will be happy to discuss this matter with you.

Sincerely yours,  
Alicia Figueroa



Cc: Bell South  
(2) Bills attached.

**Frank and Ricci App**

P.O. Box 48602  
Tampa, FL 33647

Hm. 813-977-6330  
Wk. 813-483-2521

COMMUNICATIONS  
REGULATORY SERVICES

Ray E. Kennedy  
Florida Public Service Commission  
2450 Shumard Oak Blvd.  
Tallahassee, FL 32399

**RE: Follow-up on Complaint Case No. 557566T – Slamming by New Century  
Telecom**

November 12, 2003

Dear Mr. Kennedy.

I submitted a complaint to the PSC on September 12, 2003 because my long distance and local toll service was changed without authorization by New Century Telecom. My individual complaint has been resolved and the case is now closed but I feel strongly that further action should be taken against New Century Tel to prevent this from happening to others.

As I stated in the complaint, my wife, Ricci received a telemarketing call at home from a man saying that he would like to send a free prepaid calling card for her to try out at no cost or obligation. The telemarketer said the free calling card was a promotion to introduce a new telephone company (New Century Telecom) that had started doing business in the area.

Ricci accepted the offer and the telemarketer asked her to verify her name and address by responding to a few computer-generated questions. Ricci responded with her name, date of birth, and with "yes" after the computer stated her address and asked her to verify it. The call ended with Ricci thinking that she would be receiving a prepaid calling card in the mail that was tied to some promotion with absolutely no obligation.

When I received our telephone bill, I immediately noticed that that our intrastate and interstate LD service had been changed from Verizon to new Century Telecom on 8/5. There were charges for LD activation, an LD monthly fee, LD calls made, taxes and surcharges from 8/25 through 8/20 in the amount of \$100.99.

I called New Century Telecom's billing agent USBI on 9/8 and informed them that this was an unauthorized switch of service and requested that they credit my bill for the full amount which they did (Order # 534 0485).



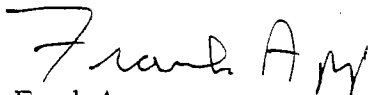
Date: April 21, 2004

On 9/11, I followed up with New Century Telecom to make sure that they would not re-bill the charges in the future including the recurring monthly charge and also asked who authorized the switch. Sophia Hernandez played what she said was a 3<sup>rd</sup> party verification tape of the conversation with my wife. I listened to the tape and immediately conferenced my wife in so she could hear it too. The tape had parts of the original conversation with the telemarketer and the computer generated questions with Ricci's responses. However, the tape had been **edited to include additional questions** asking if Ricci was authorized to make changes to our telephone service and asking Ricci to verify her understanding that she was making a change to our intrastate and interstate LD service. **Ricci's "yes" voice response to a previous question regarding the free pre-paid calling card offer was "edited in" as the response to these additional questions to make it appear as if she agreed to change our telephone service! Again, these questions about changing service were never part of the original telemarketing call!**

Ms. Hernandez insisted that her company would not do any such thing and informed me that we were wrong and that we did in fact authorize the switch. I told her that they obviously have a problem with their telemarketing vendor and 3rd party verification process. I suggested that perhaps the telemarketing vendor doctored the tape to make it appear that my wife agreed to the change in service. Ms. Hernandez was very firm and quite argumentative that we must pay the bill and all she could do is re-rate the calls at the old Verizon rate that we had.

The bottom line here is that New Century Telecom and/or its telemarketing vendor committed **fraud** by offering a free prepaid calling card, representing that there was no obligation attached, and then switching our LD service without authorization. Furthermore, I believe that the way the tape of the call was edited to make it appear as if my wife agreed to change our LD service is a **criminal act**. I urge the Florida PSC to take action against New Century Telecom and its telemarketing vendor so this does not happen to anyone else.

Sincerely,



Frank App

  
Ricci App

**Complaints for which Optical failed to provide a TPV**

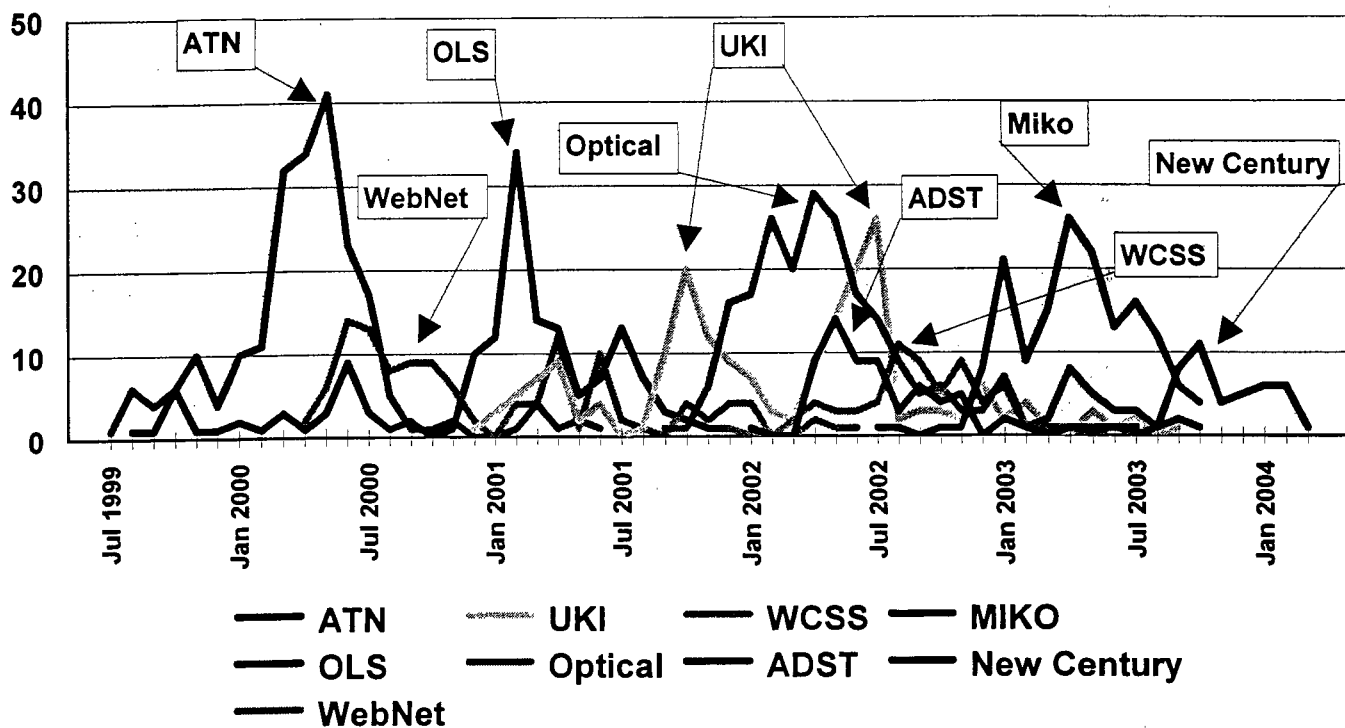
	<b>CATS #</b>	<b>Customer Name</b>	<b>BTN</b>
1	511035	Frank Ferrer	305-362-6061
2	511106	Alejandro Dumas	813-977-4981
3	511708	Antonio Coro	305-868-2016
4	521411	Alfredo Munoz	941-758-8597
5	530151	Ino Velazquez	305-412-3474
6	531486	Candido Mendoza	305-969-2378
7	538658	Librada Barrero	305-625-6296
8	540233	Hugo Portilla	305-885-9098
9	544491	Robert Marco	305-386-9358
10	547960	Alejandro Dumas	813-977-4981
11	559332	Victor Pineiro	305-836-3550

**Complaints for which Optical failed to include all the required  
information on the TPV**

	<b>CATS #</b>	<b>Customer Name</b>	<b>BTN</b>
1	510088	Gayle Smith	863-735-9299
2	512234	Rosinda Garcia	305-868-8697
3	513391	Julissa Rosa	407-931-2851
4	514282	Herberto Vasquez	954-704-4368
5	515335	Patricia Pastor	305-948-3691
6	517113	Marianela Castro	305-818-1854
7	521060	Nereo Medina	654-969-5243
8	522734	Roberto Ocampo	305-387-4118
9	526438	Nelson Pay	305-386-4563
10	528156	Robert Busto	305-246-8420
11	528318	Santiago Rodriquez	407-382-4736
12	528652	Oscar Ferreira	305-279-8815
13	528696	Louis Lotufo	561-479-0661
14	529367	Blanca Mena	305-258-5916
15	529932	Kevin Robinson	407-880-2844
16	530774	Zoe Martinez	305-596-4377
17	531576	Maria Gonzales	305-534-6185
18	531892	Sonia Medrano	305-255-7856
19	539676	Teodoro Fernandez	954-985-0361
20	542312	Isabel Garcia	407-521-6381
21	550026	Leonard Ferrer	305-661-0149
22	554215	Oscar & Ana Dominguez	305-821-1488
23	563069	Jose Cascante	654-961-8936

**Chart 1**

**Slamming Infractions Time Progression**



**Chart 2**

**Aggregate Slamming Infractions**

