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MARC SPITZER
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Commissioner
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner

Arizona Corporation Commission

DOCKETED

FEB 19 2003

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UTILITIES DIVISION STAFF,

Complainant

Docket No. T-03889A-02-0796
T-04125A-02-0796

vs.

LIVEWIRE NET OF ARIZONA, LLC; THE
PHONE COMPANY MANAGEMENT GROUP,
LLC; THE PHONE COMPANY OF ARIZONA
JOINT VENTURE dba THE PHONE COMPANY
OF ARIZONA; ON SYSTEMS TECHNOLOGY,
LLC, and its principles, TIM WETHERALD,
FRANK TRICAMO AND DAVID STAFFORD;
THE PHONE COMPANY OF ARIZONA, LLP
and its members,

**QWEST'S OPPOSITION TO
STAFF'S MOTION FOR
EXTENSION OF TIME AND
NOTICE OF DISCONNECTION**

Respondent

INTRODUCTORY STATEMENT

Qwest Corporation ("Qwest") hereby files its Opposition to ACC Staff's Motion for Extension of Time ("Motion") and Notice of Disconnection in the above-referenced proceeding. Qwest strongly opposes Staff's request. As explained below, Qwest submits that Staff's Motion,

1 if approved, would significantly alter the procedural posture of this proceeding. More
2 importantly, there is no legal or equitable basis under applicable Arizona law or Commission
3 Rules to establish a separate, "bifurcated" portion of a Staff-initiated Order To Show Cause
4 ("OSC") proceeding solely to address Qwest's ability to disconnect a wholesale customer.
5 Pursuant to the terms of its Commission-approved interconnection agreement with the Phone
6 Company Management Group ("PCMG"), Qwest already possesses the requisite authority to
7 terminate its service to PCMG. There is no need for a separate proceeding to review whether
8 Qwest has such authority.
9

10 Equally important, as the initiator of the OSC, Staff bears the burden of proof in this
11 proceeding. The revised schedule submitted by Staff clearly fails to meet this obligation and
12 should be summarily rejected.
13

14 **1. Staff Has Not Provided A Sufficient Basis For An Additional Extension Of This
15 OSC Proceeding**

16 Staff's latest request for an extension of time to complete discovery and related matters is
17 the second extension request by Staff in this proceeding since the January 7, 2003 Procedural
18 Conference. In a January 13, 2003 Procedural Order, the Assigned ALJ ordered that a hearing be
19 scheduled for February 4, 2003, established an expedited discovery response requirement, and
20 further ordered that witness lists and exhibits be exchanged by parties by January 24, 2003. This
21 "expedited" schedule was the result of the Assigned ALJ's careful consideration of balancing the
22 interests of the parties toward a swift resolution of this matter and ensuring adequate protection
23 of customers of PCMG who might be adversely affected by the results of the OSC. At the
24 Procedural Conference, Qwest stressed the significant financial liability of PCMG to Qwest in
25 Arizona (almost \$1,500,000 at that time) and that the outstanding indebtedness of related entities
26

1 to Qwest (e.g. Mile High Telecom in Colorado) stood at over \$4,000, 000.¹

2 On January 23, Staff requested a one-month extension of time for discovery and related
3 matters. Qwest opposed Staff's extension request, and filed its Witness and Exhibit Lists
4 according to the ALJ's original schedule. The assigned ALJ granted Staff a three week
5 extension, and reset the hearing date for February 24, 2003. Staff's pending February 13
6 Motion, filed the day before Witness and Exhibit Lists were due, now seeks a six-week extension
7 of the hearing date, citing numerous reasons, including a need for more time for discovery and a
8 desire to now pre-file testimony in this case.² (Motion, pg. 2). In a proceeding that Staff
9 acknowledged should be prosecuted on an expedited basis, it now requests that Pre-filed
10 Testimony be filed on March 21, Company/Intervenor Testimony on April 4, 2003 with hearings
11 scheduled for April 11, 2003.³

12
13 Staff's Complaint in this case was filed on October 18, 2002. This action was taken after
14 several weeks of investigation,⁴ including meetings with Qwest personnel, who provided
15 relevant information regarding PCMG's indebtedness to Qwest, PCMG's breach of the payment
16 provisions of its interconnection agreement with Qwest, and the status of similar proceedings
17 against entities affiliated with PCMG in other Qwest region states, including Colorado. Despite
18 the breadth of allegations in multiple jurisdictions pending against PCMG and its affiliates,⁵
19 Staff engaged in no formal discovery from the time the Complaint was filed until well after the
20
21

22 _____
¹ See discussion in January 7, 2003 Procedural Conference Transcript, pp. 22-29.

23 ² Staff also cites a family emergency of Staff Lead Counsel as a reason for its request. Qwest is very sensitive to the fact that
24 emergency developments often occur and do, in many cases, justify an extension of proceedings to accommodate such matters.
However, Staff's six-week extension request exceeds an amount of time reasonably related to such an absence, and places all
other parties at a significant procedural disadvantage.

25 ³ Qwest notes that April 11, 2003 is a Friday. Qwest also gives notice that its Assigned Counsel will not be available during the
April 7-11 time period. Qwest has not yet been able to determine the availability of its witnesses for the suggested hearing date.

26 ⁴ In its Complaint, Staff acknowledges that it was first notified on September 20, 2002 regarding investigations of PCMG
affiliates in Colorado, Minnesota, and Washington State.

⁵ See Exhibits B, C, D, E and F.

1 January 7 Procedural Conference, nor did it request expedited scheduling of a procedural
2 conference to move this proceeding forward. As stated at the Procedural Conference, Qwest has
3 attempted to work proactively and cooperatively with Staff on this proceeding. However, given
4 the considerable delays already experienced, and the importance of this proceeding to not only
5 Qwest but to PCMG's Arizona customers, Qwest submits that Staff has not established a
6 justifiable basis for the additional extension requested. This latest extension request should be
7 rejected.
8

9 **2. Qwest's Right and Obligation to Disconnect PCMG For Non-Payment Of**
10 **Outstanding Invoices is Clear**

11 Staff's Motion indicates "so that Qwest is not prejudiced by any extension of time, Staff
12 does not oppose bifurcating the case *as originally requested by Qwest* and allowing Qwest to
13 proceed under the current schedule on its request to disconnect the Phone Company of Arizona
14 for non-payment of Qwest's invoices." (Motion, pg. 2.) Staff's statement evidences a
15 misunderstanding of Qwest's position as set forth at the procedural conference and fails to
16 acknowledge Qwest's absolute right to disconnect PCMG for non-payment for services rendered
17 under current Arizona law.
18

19 Qwest made no request at the Procedural Conference to bifurcate this proceeding.⁶ Qwest
20 intervened in this proceeding primarily at Staff's behest, because as PCMG's largest creditor,
21 Qwest possesses information critical to Staff's showing in the OSC. Qwest's position is
22 straightforward: the terms and conditions governing Qwest's ability to disconnect PCMG for
23 non-payment of invoices for contracted services are contained in Qwest's interconnection
24 agreement with PCMG. Qwest currently is providing wholesale local exchange service to PCMG
25

26 ⁶ PCMG also has not supported Staff's request to bifurcate this proceeding, although PCMG, for obvious reasons, does support

1 in accordance with its interconnection agreement (“the Agreement”) with PCMG, which was
2 filed with the Commission on May 13, 2002 and approved in Decision No. 65142 on August 11.
3 2002.⁷ PCMG has repeatedly violated the terms of this agreement by failure to make required
4 payments for service provided and properly billed by Qwest to PCMG during the period from
5 May 22, 2002 until the present.

6
7 The operative provisions of the Agreement are clear. Under Section 5.4.1.of the
8 Agreement, “amounts payable...are due and payable within thirty calendar Days after the date of
9 invoice, or within twenty calendar Days after receipt of invoice, whichever is later.” Under
10 Agreement Section 5.4.3, “the Billing Party **may disconnect any and all relevant services for**
11 **failure by the billed party to make full payment, less any disputed amount...**within Sixty
12 calendar Days following the payment Due date.” Section 5.4.4 provides that should CLEC
13 [PCMG] or Qwest dispute, *in good faith*, any portion of the nonrecurring charges or monthly
14 Billing under this Agreement, the Parties will notify each other in writing within fifteen calendar
15 Days following the payment Due Date identifying the amount, reason and rationale of such
16 dispute. **At a minimum, CLEC [PCMG] and Qwest shall pay all undisputed amounts due.**”
17 (Emphasis Added).
18

19 PCMG has repeatedly violated each and every provision referenced above. At present,
20 PCMG has paid Qwest only approximately \$41,000 of over \$1,800,000 in total invoices for
21 wholesale interconnection services rendered, in clear violation of Section 5.4.1 of the
22 Agreement. Despite receipt of multiple nonpayment notices from Qwest, PCMG did not, on
23
24

25 Staff’s request and timeframe for an extension.

26 ⁷ PCMG formerly was known as LiveWireNet of Arizona, LLC (“LWNA”). LWNA obtained a Certificate of Public Convenience and Necessity from the Commission in Docket No. T-03889A-00-0393, in Decision No. 63382, on February 16, 2001. LWNA changed its name to PCMG as of January 29, 2002, by amending its Articles of Organization with the Arizona Corporation Commission.

1 either a formal written or informal basis, dispute any of Qwest's invoices. Only on December 31,
2 2002, after Qwest filed a Notice of Disconnection in this docket, did PCMG provide Qwest with
3 any indication whatsoever that it disputed any portion of Qwest's bills for service. PCMG
4 provided no supporting documentation for its "dispute" until January 17, 2003. More
5 importantly, under PCMG's own analysis, over \$1,100,000 of its current indebtedness to Qwest
6 **is not in dispute**. Under the terms of the agreement, PCMG is obligated to timely pay this
7 undisputed amount, even if negotiations continue regarding outstanding disputes.⁸ PCMG's
8 unwillingness or inability to provide full payment for undisputed amounts is in clear violation of
9 Section 5.4.4 of the Agreement. Absent full payment of the undisputed outstanding indebtedness,
10 Qwest is legally entitled to, at any time, give PCMG notice of termination and move to
11 disconnect its wholesale service.
12

13 The only laws in Arizona governing disconnection of wholesale interconnection services
14 are the terms of Commission-approved interconnection agreements such as the Qwest-PCMG
15 Agreement. The Commission's rule on Termination of Service (R14-2-311) applies to retail, not
16 wholesale customers. Even under the terms of this rule, however, Qwest legally is entitled, upon
17 providing five days notice, to terminate service to any customer due to:
18

- 19
- 20 • Violations of any of the utility's tariffs;
 - 21 • Failure of the customer to pay a delinquent bill for utility service; and
 - 22 • Customer breach of a written contract for service between the utility and customer.

23

24 ⁸ PCMG's inexplicably contends that it is entitled to an undetermined amount of damages due to the manner in which
25 Qwest currently provides Customer Service Records ("CSRs"). Contrary to PCMG's contentions, the FCC recently
26 reaffirmed that Qwest's CSR provisioning intervals currently operate at parity for both Qwest retail and wholesale activities.
See FCC Memorandum Opinion Order, Qwest Communications International, Inc. for Authorization to Provide In-region,
Inter-Lata Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, and Wyoming, FCC
02-332 (released December 23, 2002), Paragraph 59, addressing Qwest's ongoing compliance with parity standards for
processing CSRs. More importantly, these claims do not provide any basis for PCMG to withhold payment of Qwest's
service invoices.

1 PCMG's non-payment of all undisputed portions of its outstanding invoices to Qwest is in clear
2 violation of each of these requirements. Accordingly, pursuant to Section 5.4.3 of the Agreement
3 and R14-2-311(C)(1), Qwest gives Notice of Disconnection of services to PCMG as of March
4 6, 2003. A copy of Notice provided on this date to PCMG is attached as Exhibit A.

5 Qwest has not thus far proceeded with disconnection activity for two reasons. First, in
6 October 2002, Staff informally requested that Qwest not take such action until it filed its OSC,
7 and included in its Complaint a statement that "Staff has informed Qwest that it may not
8 disconnect service without prior notice to the Commission so that customers may be transferred
9 to other providers if necessary without service disruption." (Complaint, pg. 5). Second, at the
10 January 7, 2003 Procedural Conference held in this proceeding, after extensive discussion
11 regarding Qwest's desire to move forward with disconnection, the Assigned Administrative Law
12 Judge indicated that "I am going to...in my [P]rocedural [O]rder order the continuation of
13 service to those individuals." (Procedural Conference Transcript, pg. 42). No such directive was
14 included in the ALJ's subsequent January 13 and January 30, 2003 Procedural Order(s), nor does
15 Qwest believe there is a legal basis for enjoining Qwest from enforcing the terms of its
16 Commission-approved interconnection agreement.⁹

17 Qwest submits that consistent with its Notice, the Assigned ALJ should direct PCMG to
18 immediately provide notice to its customers of service disconnection, in no event later than
19 February 27, 2003, to afford current PCMG customers the opportunity to make arrangements
20 with alternative local service providers.
21
22
23

24
25 ⁹ Nor does Qwest believe that the Commission's rule for Abandonment of Service (R14-2-1107) is applicable to the instant
26 situation. PCMG has not filed an application to abandon service, and has not evidenced any intention to do so. This rule
contemplates voluntary abandonment of service. It does not address circumstances resulting from the new competitive
environment in telecommunications, where termination of wholesale service to local service providers who do not fulfill their

1 While Qwest recognizes that the notice it recommends be given to potentially affected
2 customers is less than Staff would like, Qwest strongly believes that further delay of the type that
3 would result from Staff's extension request would be even more injurious to PCMG's existing
4 customer base. There are numerous proceedings against PCMG's management pending in
5 federal court and before various state Commissions. In light of the Staff's latest request to extend
6 the procedural schedule in this proceeding, Qwest's disconnection of PCMG with notice to
7 affected parties represents the most sensible and equitable approach to resolving this matter.
8

9 CONCLUSION

10 For these reasons, Qwest respectfully requests that Staff's motion be denied, and that, in
11 accordance with Qwest's filed Notice of Disconnection effective March 6, 2003, the
12 Commission immediately direct PCMG to notify its customers by February 27, 2003 to seek an
13 alternative local service provider. Since hearings on this matter are scheduled for February 24,
14 Qwest requests that the Assigned ALJ immediately convene a Procedural Conference to unresolved
15 procedural issues (e.g. filing of Witness Lists and Exhibits, order of witnesses, burden of proof, etc.)
16 as well as, if necessary, the issues raised by Staff's Motion.
17
18

19 DATED this 19th day of February, 2003.
20

21 QWEST CORPORATION

22 By: 

23 Timothy Berg
24 Theresa Dwyer
25 FENNEMORE CRAIG, P.C.
26 3003 North Central, Suite 2600
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contractual obligations is necessary.

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QWEST CORPORATION
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Attorneys for Qwest Corporation

Original +15 copies filed
this 19th day of February, 2003 to:

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1 COPY of the foregoing mailed this
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The Phone Company of Arizona, LLP



EXHIBIT "A"



THIS LETTER WAS SENT VIA OVERNIGHT MAIL

February 19, 2003

The Phone Company Management Group LLC
3025 S Parker Road
Aurora, CO 80014

Dear Customer,

Re: 520-B11-5339-8117

This letter constitutes written notice of non-payment as required under your applicable contract.

This is to advise you that the required payment of \$1,505,209.07 has not been received.

Failure to pay this obligation has left us with no alternative but to terminate all services currently associated with the account listed above. Disconnection will begin on March 6th, 2003.

Please contact me at 515-558-1081 if you have any questions regarding your account or this notification.

Sincerely,

Austin R. Ross
Service Delivery Coordinator
900 Keo Way 4S
Des Moines, IA
50309

CC: Scott Martin
Debra Van Vlair
Robyn White
Michael Glaser, Esq.

EXHIBIT "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-60175-CIV-ZLOCH

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

TEMPORARY RESTRAINING ORDER AND
ORDER SETTING EVIDENTIARY HEARING

MARK DAVID SHINER, LEON
SWITCHKOW, TIMOTHY WETHERALD,
and TELECOM ADVISORY SERVICES,
INC.,

Defendants,

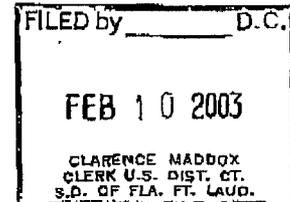
and

LEWIS STINSON, JR., P.A., as
escrow agent for certain
accounts, EQUITY SERVICE
ADMINISTRATION, INC.,
MARKETING MEDIA, INC., and USA
MEDIA GROUP, INC.

Relief Defendants.

THIS MATTER is before the Court upon the Plaintiff, Securities
And Exchange Commission's Ex Parte Motion For Temporary Restraining
Order And Other Emergency Relief (DE 14) and Plaintiff, Securities
And Exchange Commission's Motion For Leave To File Memorandum In
Excess Of Twenty-Page Limit (DE 19). The Court has carefully
reviewed said Motions, the entire court file and is otherwise fully
advised in the premises. Additionally, an ex parte hearing was
held before the Court on February 10, 2003.

The Court notes that in the instant Motion (DE 14) the
Securities and Exchange Commission (hereinafter the "Commission")



seeks an ex parte Temporary Restraining Order which would freeze assets, require sworn accounting and identification of accounts, prohibit the destruction of documents, and expedite discovery and response to the Complaint (DE 1). The Commission seeks this relief from three individual Defendants and one corporate Defendant as well as four corporate entities listed as "Relief Defendants."

Generally, pursuant to Federal Rule of Civil Procedure 65, the Court may issue injunctive relief where the moving party demonstrates that: "(1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction will not be adverse to the public interest." Siegel v. Lepore, 234 F.3d 1163, 1176 (11th Cir. 2000). In addition to the requirements for all injunctive relief, a party seeking an ex parte Temporary Restraining Order must demonstrate that immediate and irreparable harm will result before the adverse party can be heard and the movant must state facts as to why notice should not be given to the adverse party. Fed. R. Civ. P. 65. The Court notes, however, that where, as here, the Commission seeks injunctive relief "the standards of the public interest, not the requirements of private litigation" apply. S.E.C. v. J.W. Korth & Co., 991 F. Supp. 1468, 1472 (S.D. Fla. 1998) (quoting Hecht Co. v. Bowles, 321 U.S. 321,

331 (1944.); S.E.C. v. Unifund SAL, 910 F.2d 1028, 1035-36 (2d Cir. 1990). Accordingly, the Commission does not have to demonstrate the threat of irreparable harm, rather it is sufficient that the Commission show a violation of federal securities laws and the likelihood of continued violations of federal securities laws. See J.W. Korth, 991 F. Supp. at 1472-73; Unifund SAL, 910 F.2d at 1036-37; see also 15 U.S.C. § 78u(d) (2002) (empowering the Commission to seek a restraining order upon a "proper showing").

THE COURT HEREBY FINDS AS FOLLOWS:

1. The Commission is likely to succeed in showing that the Defendants have violated federal securities laws including Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, 15 U.S.C. §§ 77e(a), 77e(c), 77q(a) and Sections 10(b), 15(a) and 15(c) of the Exchange Act of 1934, 15 U.S.C. §§ 78j(b), 78o(a), 78o(c);

2. The Defendants are likely to continue their violations unless the Court issues an ex parte Temporary Restraining Order;

3. The entry of the ex parte Order requested by the Commission will serve the public interest in protecting the public from continued violations of the securities law; and

4. The Commission has presented sufficient evidence that the Defendants are likely to dissipate or transfer assets and destroy business records to warrant this Order being granted before the Defendants can be heard in opposition.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

(1) Plaintiff, Securities And Exchange Commission's Motion For Leave To File Memorandum In Excess Of Twenty-Page Limit (DE 19) be and the same is hereby GRANTED; and

(2) Plaintiff, Securities And Exchange Commission's Ex Parte Motion For Temporary Restraining Order And Other Emergency Relief (DE 14) be and the same is hereby GRANTED as follows:

A. Pending determination of the Commission's request for a Preliminary Injunction, Defendants, their directors, officers, agents, servants, employees, attorneys, and those persons in active concert or participation with each of them, are hereby restrained and enjoined from:

(i) Directly or indirectly, (1) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell securities in the form of units, common stock, warrants or any other securities, through the use or medium of any prospectus or otherwise, unless and until a registration statement is in effect with the Commission as to such securities; (2) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy, through the use or medium of any prospectus or otherwise, any securities, in the form of units, common stock, warrants or any other securities, unless a registration statement is filed with the Commission as to such

...securities... (in violation of Sections 5(a) and 5(c) of the Securities Act of 1933, 15 U.S.C. §§ 77e(a) and 77e(c));

(ii) Directly or indirectly, by use of any means or instruments of transportation or communication in interstate commerce, or by the use of the mails, in the offer or sale of securities, knowingly or recklessly employing devices, schemes or artifices to defraud (in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. 77q(a));

(iii) Directly or indirectly, by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security registered on a national securities exchange or not so registered, knowingly or recklessly:

(1) employing devices, schemes or artifices to defraud; (2) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) engaging in acts, practices and courses of business which have operated, are now operating or will operate as a fraud upon the purchasers of such securities (in violation of Sections 10(b) and 15(c) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b), 78o(c) and Rule 10b-5, 17 C.F.R. § 240.10b-5);

(iv) Acting as a broker-dealer by making use of the mails or any means or instrumentality of interstate commerce to effect any

transactions in, or to induce or attempt to induce the purchase or sale of, any security (in violation of Section 15(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(a));

(v) Soliciting, receiving, or depositing into any account any additional investor funds, money, or proceeds;

(vi) Advertising or promoting in any manner or method their purported investment schemes, plans, or proposals as described in the Complaint in this action, including by newspaper, magazine or other publication or through the use of any other means of communication, including telephone, facsimile transmission, electronic messaging or otherwise; and

ASSET FREEZE

IT IS FURTHER ORDERED AND ADJUDGED that, pending determination of the Commission's request for a Preliminary Injunction, the Defendants and Relief Defendants, their directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, who receive notice of this order by personal service, mail, facsimile transmission or otherwise be and hereby are, restrained from, directly or indirectly, transferring, setting off, changing, selling, pledging, assigning, liquidating, encumbering or otherwise disposing of, or withdrawing any assets or real or personal property owned by, controlled by, or in the possession of any Defendant or Relief Defendant including, but not limited to, cash and

cash equivalents, free credit balances, securities and/or property pledged or hypothecated as collateral for loans, and bank accounts held in the name of, or held for the benefit of, any Defendant or Relief Defendant, or over which any Defendant or Relief Defendant has signature authority. With respect to Relief Defendant Louis Stinson, Jr., P.A. ("Stinson Law Firm"), the Asset Freeze shall be limited at this time to the following Account Numbers at Regent Bank, held for the following Limited Liability Partnerships (LLPs) by the Stinson Law Firm as Escrow Agent:

<u>LLP</u>	<u>Account Number</u>
Mile High Telecom Partners, LLP	202855706
Phone Company of Arizona, LLP	203071306
Phone Company of Washington, LLP	3200306406
Phone Company of Minnesota, LLP	3200324206
Iowa/Nebraska Phone Company, LLP	3200389706
Phone Company of Oregon, LLP	3200329306

ACCOUNTINGS BY DEFENDANTS

IT IS FURTHER ORDERED AND ADJUDGED that within five (5) calendar days of the issuance of this Order, each Defendant shall:

(a) make a sworn accounting to this Court and the Commission of all funds, whether in the form of compensation, commissions, income (including payments for assets, shares or property of any kind), and other benefits (including the provision of services of a personal or mixed business and personal nature) received by him (or it) from any other Defendant or Relief Defendant;

(b) make a sworn accounting to this Court and the Commission of all assets, funds, or other properties held by him (or it),

jointly or individually, or for his (or its) direct or indirect beneficial interest, or over which he (or it) maintains control, wherever situated, stating the location, value, and disposition of each such asset, fund, and other property; and

(c) provide to the Court and the Commission a sworn identification of all accounts (including, but not limited to, bank accounts, savings accounts, securities accounts and deposits of any kind) in which he (or it) (whether solely or jointly), directly or indirectly (including through a corporation, partnership, relative, friend or nominee), either has an interest or over which he (or it) has the power or right to exercise control.

ACCOUNTINGS BY RELIEF DEFENDANTS

IT IS FURTHER ORDERED AND ADJUDGED that Relief Defendants shall each make a sworn accounting within five (5) calendar days of the issuance of this Order to this Court of:

(a) all funds received from any source, including, but not limited to, funds received from sales of the Limited Liability Partnerships ("LLPs") or other securities offered and/or sold by any of the Defendants;

(b) all compensation, income (including payment for assets, shares or property of any kind), other benefits (including the provision of services of a personal or mixed business and personal nature) that they have paid to any other Defendant or Relief Defendant; and

____(c) all assets, funds, or other properties held in their names, or for their direct or indirect beneficial interest, or over which they maintain control, wherever situated, stating the location, value, and disposition of each such asset, fund, and other property.

Relief Defendants shall also provide to the Court and the Commission a sworn identification of all accounts (including, but not limited to, bank accounts, savings accounts, securities accounts and deposits of any kind) in which it (whether solely or jointly), directly or indirectly (including through a corporation, partnership, relative, friend or nominee), either has an interest or over which it has the power or right to exercise control.

RECORDS PRESERVATION

IT IS FURTHER ORDERED AND ADJUDGED that, pending determination of the Commission's request for a Preliminary Injunction, the Defendants and Relief Defendants, their directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, be and they hereby are restrained and enjoined from, directly or indirectly, destroying, mutilating, concealing, altering, disposing of, or otherwise rendering illegible in any manner, any of the books, records, documents, correspondence, brochures, manuals, papers, ledgers, accounts, statements, obligations, files and other property of or pertaining to the

Defendants and Relief Defendants wherever located, until further Order of this Court.

EXPEDITED DISCOVERY AND RESPONSE TO COMPLAINT

IT IS FURTHER ORDERED AND ADJUDGED that:

(a) Immediately upon entry of this Order, the parties may take depositions upon oral examination of, and obtain the production documents from, parties and non-parties subject to two (2) business days notice. Should any Defendant and Relief Defendant fail to appear for a properly noticed deposition, that party may be prohibited from introducing evidence at the hearing on the Commission's request for a preliminary injunction;

(b) Immediately upon entry of this Order, the parties shall be entitled to serve interrogatories, requests for the production of documents and requests for admissions. The parties shall respond to such discovery requests within five (5) calendar days of service;

(c) All responses to the Commission's discovery requests shall be delivered to Kathleen Ford at 450 Fifth Street, N.W., Washington, D.C. 20549-0911 by the most expeditious means available;

(d) Service of discovery requests shall be sufficient if made upon the parties by facsimile or overnight courier, depositions may be taken by telephone or other remote electronic means; and

(e) The Defendants and Relief Defendants shall serve an Answer or otherwise respond to the Commission's Complaint within five (5) calendar days from the date of service of this Order; the Court may

deem the Commission's allegations admitted for purposes of the Commission's request for a preliminary injunction should a party fail to serve an Answer or otherwise respond within such time.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction over this matter and the Defendants and Relief Defendants in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

IT IS FURTHER ORDERED AND ADJUDGED that the Commission's request for an Order To Show Cause Why Preliminary Injunction Should Not Be Granted which the Court interprets and a Motion For Preliminary Injunction is hereby set for an evidentiary hearing before this Court on Friday, February 21, 2003, at 10:00 a.m., or as soon thereafter as counsel can be heard, in the United States District Court for the Southern District of Florida, before the Honorable William J. Zloch, in Courtroom A of the United States Courthouse, 299 East Broward Boulevard, Fort Lauderdale, Florida, regarding why an order should not be entered granting to the Plaintiff a preliminary injunction according to the terms and conditions set forth above.

IT IS FURTHER ORDERED AND ADJUDGED that, on or before February 11, 2003 the Commission shall personally serve a copy of this Order,

along with copies of the Complaint (DE 1), and all Motions and Memorandum of Law on the Defendants and Relief Defendants. On or before Tuesday, February 18, 2003, at 12:00 p.m. the Defendants shall file opposing papers, if any, regarding the Commission's Motion For Preliminary Injunction with the Clerk of this Court, and serve same upon the Commission's counsel. On or before Thursday, February 20, 2003, at 12:00 p.m., the Commission shall file a Reply Memorandum, if any.

IT IS FURTHER ORDERED AND ADJUDGED that this Order shall remain in full force and effect until the date of the hearing set forth above, or such further dates as set forth by Order of the Court, unless the Defendants stipulate, or have not objected, to entry of a preliminary injunction.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 18th day of February, 2003, at 1:42 p.m.



WILLIAM J. ZLOCH
Chief United States District Judge

Copy furnished:

Kathleen A. Ford, Esq.
For the Commission
(certified copies)

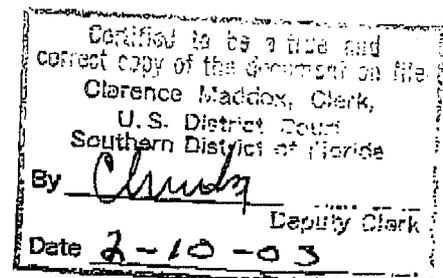


EXHIBIT "C"

MAR - 8 1995

FILED

95 MAR -7 PM 6:13

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
AND FOR THE COUNTY OF KING

No judgment
ORIGINAL

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STATE OF WASHINGTON,

Plaintiff,

v.

GTI TELECOMMUNICATIONS, INC., a Washington Corporation, formerly d/b/a GENESIS TELECOMMUNICATIONS, INC.; TIMOTHY ALAN WETHERALD, individually and as its owner, principal officer and CEO, ALEC SPENCER, individually and as its Director of Associate Relations, and Christine C. WETHERALD, on behalf of the marital community; TEMPEST INDUSTRIES, LIMITED, a Washington corporation, JOYCE I. SPENCER, individually and as its part owner and principal officer, GERALD SPENCER, individually and as its part owner and key employee, ALEC SPENCER, individually and as its part owner and principal officer, and JANE DOE SPENCER, on behalf of the marital community,

Defendants.

NO. 94-2-21036-0

CONSENT DECREE WITH DEFENDANTS GTI TELECOMMUNICATIONS, INC. AND TIMOTHY ALAN WETHERALD

CPRO	18
CUST	19
CASH	20
INCO	21
TIME	22
CPIN	23
ACCTG	24
EXH	25

I. JUDGMENT SUMMARY

- 1.1. Judgment Creditor: State of Washington
- 1.2. Judgment Debtors: GTI Telecommunications, Inc., f/d/b/a Genesis Telecommunications, Inc.; Timothy Alan Wetherald
- 1.3. Principal Judgment: -0- Injunctions; (\$200,000.00 Suspended Civil Penalties)

Consent Decree
Page 1

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EXP01

ATTORNEY GENERAL OF WASHINGTON
900 FOURTH AVENUE, SUITE 2000
SEATTLE, WASHINGTON 98164-3012
(206) 462-7744

Handwritten signature/initials

- 1 1.4. Percent interest on principal judgment: 12% per annum from the date of entry
- 2 1.5. Attorney for judgment creditor: Janet D. Reis, Assistant Attorney General
- 3 1.6. Attorney for judgment debtors: *Pro Se*

4
 5 Plaintiff, State of Washington, having commenced this action pursuant to Chapter 19.86
 6 RCW, the Consumer Business Practices – Consumer Protection Act, and the Defendants GTI
 7 Telecommunications, Inc. f/d/b/a Genesis Telecommunications, Inc. (hereinafter "GTI"); and
 8 Timothy Alan Wetherald; having been duly served copies of the Summons and Complaint
 9 herein; and Plaintiff appearing through its attorneys Christine O. Gregoire, Attorney General,
 10 Sally R. Gustafson, Senior Assistant Attorney General, and Janet D. Reis, Assistant Attorney
 11 General; Defendants named above appearing *pro se*; and said parties to this action having
 12 waived Notice of Presentation of this Consent Decree;

13 Plaintiff and the above named Defendants having stipulated and agreed upon a basis for
 14 the adjudication of the matters alleged in the Complaint herein, and the entry of this Consent
 15 Decree against the above-named Defendants; and the Court having determined that there is no
 16 just reason for delay in entry of a final judgment as to the above-named Defendants and having
 17 directed entry of this Consent Decree as to the Defendants;

18 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as
 19 follows:

20 **II. GENERAL**

21 2.1. Jurisdiction. This Court has jurisdiction over the subject matter of this action
 22 and of the parties. The plaintiffs Complaint in this matter states claims upon which relief may
 23 be granted under the provisions of the Consumer Protection Act, Chapter 19.86 RCW. The
 24 Attorney General has jurisdiction to bring this action under the provisions of Chapter 19.86
 25 RCW.

1 or any other participation arrangement with or by any individual or entity which sells, directly
2 or indirectly, interstate or intrastate long distance telecommunications services:

3 (1) selling long distance services for which tariffs have not been filed and
4 approved as required by the Washington State Utilities and Transportation Commission
5 and/or under applicable statutes of any other state or of the United States;

6 (2) failing to provide any material information to any bona fide supplier of
7 intrastate or interstate long distance or "1-800" services when seeking to obtain said
8 services for the purposes of resale to any Washington resident, which material
9 information could reasonably be expected to be considered by said supplier(s) in
10 determining whether to provide service;

11 (3) reselling long distance services by any method to any Washington
12 resident without having first obtained a written agreement or comparable document
13 from the supplier(s) of originating long distance service which sets forth with
14 specificity the terms and conditions of the provision of service to the Defendant,
15 Defendant's firm, Defendant's agent, Defendant's employer, Defendant's employee
16 or any independent representative acting in concert with or at the direction of the
17 Defendant, for resale to members of the general public;

18 (4) directly or indirectly selling any long distance product or service to any
19 Washington resident through use of independent sales representatives who are required
20 to pay a fee before obtaining the right to sell said product or service without having
21 first provided said sales representatives with a complete description of the basis for the
22 fee, which description identifies the actual costs for products or other services provided
23 to said sales representatives in exchange for the payment made;

24 (5) failing to maintain an internal bookkeeping system which, at a minimum,
25 identifies all accounts payable, all accounts receivable, and maintains account histories
26

1 for each consumer of long distance services which accurately reflect services rendered
2 and payments made by consumers;

3 (6) establishing customer accounts and billing individuals or accepting
4 payment in advance of services rendered, with the exception of any account activation
5 or similar fee, disclosed in advance to customers, provided that such activation fee is
6 not billed or accepted until customers are able to access the services as represented;

7 (7) representing to any prospective or actual customer or sales representative
8 that long distance services are available or that access to long distance services is
9 available on a reliable basis from certain suppliers of service when the services are not
10 so accessible or available from the service providers identified;

11 (8) failing to identify, to any prospective or actual customer or sales
12 representative, all providers of long distance and/or related services that have been
13 contracted with or are otherwise obligated to provide services to customers;

14 (9) failing to timely pay all providers of long distance service for all services
15 rendered on terms and conditions required by said providers such that discontinuation
16 or denigration of long distance service to any Washington resident occurs as a
17 proximate result of said failure to pay or meet required terms.

18 B. In the event Defendant Wetherald, directly or indirectly, becomes employed or
19 enters into any other participation arrangement with any individual or entity which sells,
20 directly or indirectly, interstate or intrastate long distance telecommunications services,
21 Defendant shall provide complete and legible copies of the Complaint filed in this matter and
22 this Consent Decree prior to his employment or other participation.

23 **IV. CIVIL PENALTIES**

24 4.1. Civil Penalties. Pursuant to RCW 19.86.140, the plaintiff State shall recover
25 and Defendants Tim Wetherald and GTI Telecommunications, Inc. shall be jointly and
26

1 severally liable for a civil penalty of \$200,000.00. These civil penalties are suspended
2 conditioned on full compliance with all provisions of this Consent Decree.

3 **V. ENFORCEMENT**

4 **5.1. Compliance.** For the purposes of determining or securing compliance with this
5 Consent Decree, representatives of the Office of the Attorney General shall be permitted, upon
6 reasonable notice to Defendants:

7 a. Access during regular office hours for inspection and copying of any and
8 all records or documents in the actual or constructive possession of Defendants
9 regarding any matters contained in or related to this Consent Decree; and

10 b. To question or depose Defendants and any officer, director, agent,
11 employee, representative or independent contractor of Defendant regarding any matters
12 contained in or related to this Consent Decree.

13 **5.2. Jurisdiction Retained.** Jurisdiction of the Attorney General and the Court over
14 Defendants is retained for the purpose of enabling Plaintiff to apply to the Court at any time
15 for the enforcement of compliance with and recovery of the relief provided for in this Consent
16 Decree.

17 **5.3. Violation.** The violation of any of the terms of this Consent Decree shall
18 constitute a violation of an injunction for which civil penalties of up to \$25,000.00 per
19 violation may be sought by the Attorney General pursuant to RCW 19.86.140 in addition to
20 such other remedies as may be provided by law for violation of an injunction.

21 **5.4. Enforcement Fees and Costs.** Defendant shall bear all of plaintiff's costs,
22 including reasonable attorney's fees, of enforcing this Consent Decree should action, including
23 collection to enforce any provision, become necessary.

24 **5.5. Private Action.** Nothing in this Consent Decree shall be construed as a limit
25 or a bar to any other person or entity in the pursuit of available remedies.

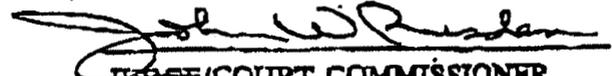
VI. DISMISSAL

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6.1. Defendants voluntarily dismiss, with prejudice, all counterclaims stated in their Answers.

6.2. Dismissal of Action. Except as provided above, this proceeding is in all other respects dismissed as to defendants GTI Telecommunications, Inc. and Timothy Alan Wetherald, upon entry of this Consent Decree. There is no just reason for delay and the Clerk of the Court is directed to enter this Judgment as to Defendants GTI Telecommunications, Inc. and Timothy Alan Wetherald.

DATED this 12th day of ~~February~~^{March}, 1995.

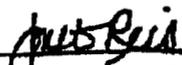


JUDGE/COURT COMMISSIONER

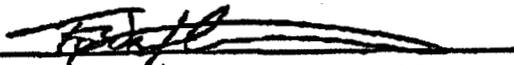
Agreed to and Approved for Entry by:

Agreed to; Approved as to Form;
Notice of Presentation Waived By:

CHRISTINE O. GREGOIRE
Attorney General
SALLY R. GUSTAFSON
Senior Assistant Attorney General



JANET D. REIS WSBA # 12799
Assistant Attorney General
Attorneys for Plaintiff
State of Washington



TIMOTHY ALAN WETHERALD,
Individually, on behalf of his marital
community, and on behalf of GTI
Telecommunications, Inc., formerly
d/b/a Genesis Telecommunications,
Inc.

SEATTLE, Aug. 23 /PRNewswire/ -- The Washington State Attorney General's Office took action today to disconnect the business operations of a long-distance telephone service promoter whose corporations have a five-year history of three bankruptcies and whose Federal Way-based firm recently collapsed.

The Attorney General's Office filed a Consumer Protection suit in King County Superior Court this morning against Timothy Allen Wetherald and his failed Genesis Telecommunications Inc. (GTI) business, which was a long-distance reselling operation. Also named defendants in the suit are the associated Tempest Industries Ltd. and its officers, Joyce I. Spencer, Gerald Spencer and Alec Spencer.

Wetherald and his associates left at least 2,500 individuals and businesses in the lurch, both in Washington and across the country. Induced to become Genesis/GTI sales associates or customers, these individuals and businesses were left with no reliable long-distance service to sell or use.

The Attorney General's Office is asking the court to prevent Wetherald from operating in this state as a long-distance broker -- or as the owner of or participant in any type of multi-level marketing enterprise.

The lawsuit -- which seeks an injunction and up to \$2,000 per violation in civil penalties -- also targets a new business activity that Wetherald launched just a few weeks ago and is marketing from his new business base in Golden, Colo.

"We're challenging Wetherald's current scheme of using a debit card system to get money upfront for telephone services that may or may not be provided," said Attorney General Christine O. Gregoire, "He is marketing this new telecommunications product under the name 'GTI Call America' and selling the debit cards through the same multi-level, sales associate structure he used for Genesis/GTI."

The suit alleges that, using the misleading claim that Genesis/GTI had long-term viability as a telecommunications provider, Wetherald induced at

least 500 individuals and businesses to pay fees and become business sales associates.

Wetherald -- whose background includes two telecommunications business bankruptcies in Oregon prompting that state to obtain a three-year injunction against him in 1991 -- also is alleged to have used misleading tactics to convince at least 2,000 businesses and individuals that GTI/Genesis could provide a reliable long-distance telephone service. These companies and individuals, who were promised they would get permanent services at substantially discounted rates, paid upfront fees to become customers.

In addition to the sales associates and the customers that Wetherald and his firm allegedly abandoned, the Attorney General's Office states that several telecommunications carriers who sold access to GTI were not paid. Because of undercharging consumers for access, the lawsuit alleges that Genesis/GTI failed to pay its own phone bills.

The state contends that Wetherald "knew or should have known that Genesis/GTI was destined to fail to provide ongoing long-distance service" because of inadequate operating capital and his failure to charge fees that would cover access expenses.

The Attorney General's Office also alleges that the Colorado resident is using a debit card venture "intended to induce individuals and businesses to become, or continue as, sales associates" for Wetherald and/or Genesis/GTI "or a new company yet to be formed."

Wetherald's background also includes majority ownership of a pre-GTI business named Intranet Communications Inc. based in Bellevue. Intranet, which worked along the same lines as GTI, filed Chapter 11 bankruptcy in March 1993. In the midst of that bankruptcy, Wetherald incorporated GTI in May 1993.

Today's filing also states that when GTI's "1-800" service provider, LDDS, cut off access to its outbound service lines in late May of this

year, Wetherald "promptly abandoned" his Washington based operations and re-established headquarters in Colorado.

Gregoire said that when Wetherald last week rejected an offer that would have subjected him to an injunction, the Attorney General decided it was time for prompt action.

Referring to the new debit card scheme, Gregoire said, "We want to act quickly to reduce further victimization of Washington citizens."

The Washington Utilities and Transportation Commission assisted the Attorney General's Office in this investigation. Sharon L. Nelson, commission chair, applauded the action of the Attorney General's Office saying, "This cooperative action shows that our staff and the Attorney General's Office are very serious about protecting our state's telecommunications consumers from unsavory business practices."

Assistant Attorney General Douglas D. Walsh and Investigator Christopher Walsh are handling the case for the Attorney General's Office.

CONTACT: Douglas Walsh, Consumer Protection (206) 464-7243, or Grace Eubanks, Public Affairs (206) 753-6207, both of the Washington State Attorney General's Office; or Steven King of UTC Public Affairs Office (206) 586-1179

LETTERS... Send Submissions To: telconet@aol.com

Subj: Syncom profile in Issue #35
From: LDMLM@aol.com
To: Telconet@aol.com

I am a Syncom representative, and I wanted to clarify a couple of points

EXHIBIT "D"

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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
COLORADO**

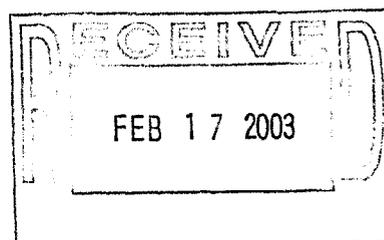
Docket No. 02A-463AT

IN THE MATTER OF THE APPLICATION OF MILE HIGH TELECOM JOINT
VENTURE TO DISCONTINUE OR CURTAIL JURISDICTIONAL
TELECOMMUNICATIONS SERVICE

**NOTICE OF FAILURE BY MILE HIGH TELECOM JOINT VENTURE
TO COMPLY WITH DECISION NO. R02-1261**

Qwest Corporation ("Qwest"), through undersigned counsel, hereby files its Notice of Failure By Mile High Telecom Joint Venture (the "Joint Venture") To Comply With Commission Ordered Transition Plan ("Notice"). In compliance with the Decision No. R02-1261 Qwest provides the following notice:

1. On November 7, 2002 Administrative Law Judge William J. Fritzel ("ALJ Fritzel") issued his Recommended Decision Granting Application to Discontinue Jurisdictional Telecommunications Service, Approving Transition Plan and Designating Default Provider in this matter ("Termination Order"). (See: Decision No. R02-1261).
2. Exceptions to the Recommended Decision were filed by On Systems Technology, LLC ("On Systems") on November 27, 2002. Those Exceptions were denied by the Commission in its Order dated January 21, 2003. (See: Decision No. C03-0077).
3. As a result of Decision No. C03-0077, denying On System's Exceptions, the Recommended Decision of ALJ Fritzel, Decision No. R02-1261, became the decision of the Commission on January 21, 2003.



4. The Termination Order adopted a Transition Plan and ordered that the Joint Venture implement the Transition Plan. The Transition Plan includes the requirement that the Joint Venture give notice to all of its customers that it would cease providing telecommunications services and that these customers have the right to select an alternative provider. (See: Termination Order ¶7, 9).

5. The Joint Venture was ordered to begin sending notices to its customers “on the second business day following the effective date of the Order approving the Application.” (See: Termination Order, Decision R02-1261, Attachment A, ¶5). The Termination Order also directed that “not less than two business days after each notice mailing to its customers, [the Joint Venture] will file with the Commission an affidavit attesting to its compliance with these notice requirements.” (See: Termination Order, Attachment A, ¶2).

6. Given an effective date of the Termination Order of January 21, 2003, the Joint Venture was required to begin mailing notices to its customers on January 23, 2003, and to file an affidavit with the Commission no later than January 27, 2003 confirming its compliance with the Commission’s Order. As of the date of Qwest’s Notice no such affidavits have been filed by the Joint Venture. Instead a letter dated January 27, 2003 signed by Tim Wetherald in his capacity as Manager for the Managing Venturer of the Joint Venture was sent to the Commission advising that “no notice of discontinuance would be sent by Mile High Telecom Joint Venture to its customers.” (See: Exhibit 1, Wetherald letter dated 1/27/03.)

7. In the event that the Joint Venture fails or is unable to comply with the Termination Order, Qwest, as the designated default provider, is required to assume the

obligations of the Transition Plan, and is required to notify the Commission of Qwest's intent to comply with this Order. (See: Termination Order, ¶18).

8. By way of this Notice, Qwest is advising this Commission that the Joint Venture has failed to implement and carry out the provisions of the Transition Plan as ordered by this Commission in the Termination Order. Qwest will assume the requirements of notifying the Joint Venture's Customers in accordance with Termination Order and begin implementation of the Transition Plan as soon as practicable. Qwest will provide notice to the Joint Venture's customers in accordance with the language of the notice approved and made a part of the Commission Order. A copy of the proposed customer notice letter is attached to this Notice. (See: Exhibit 2, Customer Notice Letter).

9. Because neither the Joint Venture nor its members, On Systems and Mile High Telecom Partners, LLP has supplied to Qwest the customer information necessary for Qwest retail operations to provide the notice to customers described in paragraph 8 above and as identified in paragraph 2 of the Transition Plan, in order to implement the customer notice requirements of the Transition Plan, it will be necessary for Qwest wholesale operations to provide necessary customer information to Qwest retail operations. A letter directing wholesale operations to provide such necessary customer information to retail operations for the purposes only of effectuating the Transition Plan, as contemplated by paragraphs 17 and 18 of the Termination Order, is attached to this Notice. (See: Exhibit 3, Wholesale/Retail letter).

WHEREFORE, Qwest hereby submits this Notice to the Commission that Mile High Telecom Joint Venture has failed to comply with the customer notice provisions of

the Transition Plan as ordered by this Commission, that Qwest will therefore assume the customer notice obligations under the Transition Plan, and that in order to undertake these notice obligations Qwest wholesale operations will provide the necessary customer information of the Joint Venture to Qwest retail operations.

Dated this 13th day of February, 2003.

By: 

Winslow F. Bouscaren, No. 31695
Kris A. Ciccolo, No. 17948
Qwest Services Corporation
Policy and Law
1005 17th Street, Suite #200
Denver, CO 80202
(303) 896-1518
(303) 896-6095 (fax)
wbousca@qwest.com

and

Russell P. Rowe, No. 2443
Elizabeth Beebe Volz, No. 26430
Campbell Bohn Killin Brittan &
Ray, LLC
4725 S. Monaco Street, Suite 350
Denver, CO 80237
(303) 322-3400
(303) 770-4838 (fax)
rowe@campbellbohn.com

Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I hereby certify that the foregoing NOTICE OF FAILURE BY MILE HIGH TELECOM JOINT VENTURE TO COMPLY WITH DECISION NO. R02-1261 was filed with the Colorado Public Utilities Commission via facsimile at (303) 894-2065 on the 13th day of February 2003 and that the original and fifteen copies of the same will be hand-delivered on the 14th day of February 2003 to:

Bruce Smith, Director
Colorado Public Utilities Commission
1580 Logan Street, Office Level 2
Denver, CO 80203

and a copy was placed in the United States mail, postage prepaid, addressed to the following:

Russell P. Rowe, Esq.
Elizabeth Volz, Esq.
Campbell Bohn Killin Brittan & Ray, LLC
4725 S. Monaco Street, Suite 350
Denver, CO 80237

****John Trogonoski**
Testimonial Staff
Colorado Public Utilities Commission
1580 Logan Street, OL-2
Denver, CO 80203

Michael L. Glaser, Esq.
Lottner Rubin Fishman Brown & Saul, P.C.
633 17th Street, Suite #2700
Denver, CO 80202

****William A. Steele**
Testimonial Staff
Colorado Public Utilities Commission
1580 Logan Street, OL-2
Denver, CO 80203

G. Harris Adams, Esq.
Assistant Attorney General
Office of Consumer Counsel Unit
Office of the Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203

****Jerry Enright**
Testimonial Staff
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1580 Logan Street, OL-2
Denver, CO 80203

Pat Parker
Rate/Financial Analyst
Office of the Consumer Counsel
1580 Logan Street, Suite #740
Denver, CO 80203

****Roxi Nielsen**
Testimonial Staff
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Denver, CO 80203

****John Epley**
Testimonial Staff
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****Geri Santos-Rach**
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Rebecca Quintana
Advisory Staff
Colorado Public Utilities Commission
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Michael Zimmerman
Advisory Staff
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Anthony Marquez
Paul C. Gomez
Jennifer Warnken
State Services Section
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Denver, CO 80203

**David M. Nocera
Assistant Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203

Mark A. Davidson
Dufford & Brown, P.C.
1700 Broadway, Suite 1700
Denver, CO 80290-1701

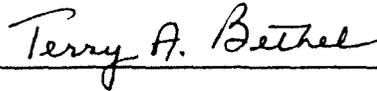


EXHIBIT 1

MILE HIGH TELECOM JOINT VENTURE

3025 S. Parker Road, Suite 1000
Aurora, Colorado 80014
Telephone: (303) 306-3400

January 27, 2003

VIA FACSIMILE TRANSMISSION

Bruce Smith, Director
Public Utilities Commission of the
State of Colorado
1580 Logan Street
Office Level 2
Denver, Colorado 80203

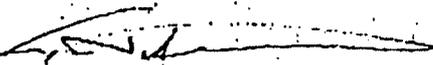
Re: *Mile High Telecom Joint Venture*

Dear Mr. Smith:

Please be advised that after consulting with bankruptcy counsel for Mile High Telecom Joint Venture, and in particular after discussing the impact of the automatic stay contained in 11 U.S.C. §362(a), it was determined that no notice of discontinuance would be sent by Mile High Telecom Joint Venture to its customers. You should also be advised that On Systems Technologies, LLC, the managing venturer for Mile High Telecom Joint Venture, has recently filed an Emergency Motion with the United States Bankruptcy Court seeking an Order to Show Cause why the PUC and Qwest Corporation should not be held in contempt for violation of the stay provisions contained in the Bankruptcy Code.

Should you have any questions about any of the foregoing, or if I may be of further service, I trust that you will not hesitate to contact me.

Very truly yours
ON SYSTEMS TECHNOLOGS, LLC,
Managing Venturer



By: Timothy Wetherald, Manager

TW/dw

cc: Peter Lucas, Esq.
Glenn W. Merrick, Esq.
Robert D. Clark, Esq.
Elizabeth K. Flaagen, Esq.

EXHIBIT 2

**NOTICE OF MILE HIGH TELECOM'S INTENT TO STOP
PROVIDING YOU WITH LOCAL TELEPHONE SERVICE**

SAMPLE LETTER

Dear Customer:

Mile High Telecom was granted permission from the Colorado Public Utilities Commission (PUC) to stop providing you with local telephone service. You have two options to maintain telephone service:

1. Before [*Between March __ and April __, date set 30 days from date of each notice letter*], 2003 you can sign up with another telephone company of your choice (see attached list).
2. If you have not chosen another provider by [March __/April __], 2003, except as stated below, your service will be transferred automatically to Qwest, the default provider designated by the PUC. The transfer will occur between April __ and May __, 2003 [*first date calculated as 30 days after last notice letter sent and second date 60 days after last notice letter*]. Neither Qwest nor Mile High Telecom will charge you to transfer your service.

Please be aware that if you do not choose another provider and you are transferred to Qwest, you will receive the same telephone number and the same service and features that you have now, except they will be provided under Qwest's terms and conditions and Qwest's rates.

However, if your Internet access or long-distance services are provided by Mile High Telecom, those services will not be transferred. You will need to choose another Internet service provider and another 1+ long-distance company, or both.

Depending on your credit history, Qwest may charge you a deposit. Also, if you owe Qwest a previous bill for regulated telephone services (e.g., local phone service, local long-distance, and some features), Qwest may refuse you service unless you pay what is owed or make payment arrangements acceptable to Qwest. **Please note:** If you

owe Qwest a previous bill for regulated services, you must either pay Qwest what is owed, make acceptable payment arrangements, choose another provider, or risk being disconnected.

You may call Qwest at 888-807-8694 to discuss a previous bill, choose another long-distance carrier, or for any other questions you might have if you are transitioning your local service to Qwest.

Anyone may object to this proposal by sending a letter to the Colorado Public Utilities Commission, 1580 Logan Street, OL2, Denver, CO 80203. You may also object to this proposal by calling the PUC at (303) 894-2070, or toll-free outside the Denver metro area at (800) 456-0858.

Please be assured that, absent any credit problems, basic local telephone service will still be available to you.

By: _____

EXHIBIT 3

**CAMPBELL BOHN KILLIN
BRITTAN & RAY, LLC**
ATTORNEYS AT LAW

Russell P. Rowe
(303) 394-7214
rrowe@campbellbohn.com

4725 S. MONACO STREET
SUITE 210
DENVER, COLORADO 80237
(303) 322-3400
FAX (303) 770-4838

CHERRY CREEK
270 ST. PAUL STREET
SUITE 200
DENVER, COLORADO 80206
FAX (303) 322-5800

February 13, 2003

Mr. Mark Pitchford
Qwest Services Corporation
Senior Vice-President of Retail Marketing
1801 California Street., 51st Floor
Denver, CO 80202-1984

Ms. Dana Crandall
Qwest Services Corporation
Senior Vice-President of Customer Service
Qwest Tower
555 17th Street, Room 300
Denver, CO 80202-3950

Re: In the Matter of the Application of Mile High Telecom Joint Venture to Discontinue or Curtail Jurisdictional Telecommunications Service ("Termination Docket"), Docket 02A-463AT, Public Utilities Commission of the State of Colorado ("Commission")

Dear Mr. Pitchford and Ms. Crandall:

This letter will update proceedings in the Termination Docket, presently pending in Colorado.

Summary and Purpose

The letter that follows will explain what action Qwest Corporation now must take as a result of the Order Denying Exceptions entered by the Public Utilities Commission of the State of Colorado on January 21, 2002 in the Termination Docket to notify customers of Mile High Telecom Joint Venture ("Joint Venture") of the impending termination of its telecommunications services since it has failed to do so as required by the Commission. It also is intended to provide written confirmation of the obligation of Qwest Corporation wholesale operations to provide to Qwest Corporation retail operations the customer information, as defined below and described by the Commission, which will allow the required Notice Letter to be created and sent by Qwest Corporation retail operations to the Joint Venture's customers and other entities in Colorado in place of the Joint Venture. Qwest is entitled to recover its costs of giving notice from the Joint Venture.

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ATTORNEYS AT LAW

Mr. Mark Pitchford
Ms. Dana Crandall
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Detailed Discussion

At the direction of and in concert with the lawyers of Qwest Service Corporation responsible for advise and counsel on regulatory affairs in the state of Colorado, including Kris Ciccolo and Winslow Bouscaren, our firm has assisted in the representation of Qwest's interests in the above referenced Termination Docket since its commencement in August, 2002 before the Commission.

The Commission heard the matter through its Administrative Law Judge William J Fritzel ("ALJ Fritzel") on October 22 and 23, 2002, and he issued his Recommended Decision in the Termination Docket on November 8, 2002. One of the intervenors, On Systems Technology, LLC, filed Exceptions to ALJ Fritzel's Recommended Decision to the Commission, which entered its written Order Denying Exceptions on January 21, 2003 ("Order"). As a result, the application of the Joint Venture to discontinue providing telecommunications services in Colorado was granted, and ALJ Fritzel's Recommended Decision became the Order of the Commission.

A Transition Plan, Attachment A to the Recommended Decision, also became effective when the Commission denied the Exceptions of On Systems Technology, LLC in its Order. During the hearing on the Joint Venture's application in the Termination Docket, and as found both in the Recommended Decision and Order, Tim Wetherald ("Wetherald") testified on behalf of On Systems and stated that "On Systems was ready, willing, and able to comply with the provider's obligations under the Proposed Transition Plan." He further testified that "...he would inform the Commission if he were unable to perform any obligation under any Commission-ordered transition plan." That Transition Plan directed the Joint Venture to issue written notice to its customers advising them that the Joint Venture will stop providing services and that the customers must select a new provider or default to Qwest for their telecommunications services. Consistent with his testimony, the Recommended Decision further ordered Wetherald to notify the Commission if "he were unable to perform any obligation under any Commission-ordered transition plan." (Decision No. R02-1261, Docket No. 02A-463AT, ¶DD.).

The Recommended Decision also found and concluded that "Mile High Telecom Joint Venture, including the Mile High Telecom Partners, LLP and On Systems Technology, LLC, as jointly and severally liable joint venturers, *shall implement* the Transition Plan." (Decision No. R02-1261, Docket No. 02A-463AT, ¶9). Emphasis added and bolding supplied. Further, it stated that "In the event that Mile High Telecom Joint Venture cannot comply with any aspect of the Transition Plan, it *shall inform the parties* and the Commission as soon as possible." (Decision No. R02-1261, Docket No. 02A-463AT,

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¶11). Emphasis added and bolding supplied. Finally, ALJ Fritzel ordered that if the Joint Venture (or either of its partners, On Systems or Mile High Telecom Partners, LLP) fails “to timely provide its customers the Notice Letter under the Transition Plan, as demonstrated by the filing of affidavits provided by such plan” then Qwest is ordered to “notify the Commission of the failure and then assume and perform this obligation without further Commission action.” (Decision No. R02-1263, Docket No. 02A-463AT, ¶18). That same paragraph makes clear that “Qwest Corporation shall be entitled to recover its reasonable expenses incurred from the Mile high Telecom joint venture...” for performing its duties.

Under the Recommended Decision, which became the Commission’s Order, the Joint Venture was to begin sending customer notices on a rolling basis within two (2) business days after the effective date of the Order, which was January 21, 2003. Additionally, the Joint Venture was required to submit affidavits to the Commission evidencing compliance with the Order. Using the January 21, 2003 effective date of the Order, the first notices were to have been sent no later than January 23, 2003, and the first affidavits of compliance were to have been filed with the Commission no later than January 27, 2003. To date no affidavits have been filed with the Commission, a fact that we have verified by reviewing the docketing entries on this matter directly with the Commission. In addition, on January 27, 2003 Wetherald informed the Commission in writing that no such notices will be sent by the Joint Venture or its members.

At this time, the Joint Venture has failed to timely implement the Transition Plan as ordered by the Commission, so it is now incumbent upon Qwest to comply with the Recommended Decision of ALJ Fritzel. Qwest has prepared the requisite notification to the Commission of the Joint Venture’s failure, and it should proceed to implement the Transition Plan as directed by the Recommended Decision. Paragraph 17 of that Recommended Decision states:

In the event that Qwest Corporation does not receive the customer list information from mile High Telecom Joint Venture, or one of the joint venturers thereto...Qwest Corporation retail operations is ordered to request, and Qwest Corporation wholesale operations is ordered to provide, the necessary customer information for Qwest Corporation retail operations to satisfy its obligations as default provider under the transition plan. Emphasis added and bolding supplied.

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The Transition Plan specifies the information that must be made available from Qwest Corporation wholesale operations to Qwest Corporation retail operations, hereinafter referred to as "customer information," and what actions Qwest Corporation then must take. Specifically, paragraph 2 of the Transition Plan states:

...Mile High must provide Qwest with a complete and accurate customer list which includes each customer's name, telephone number, billing address, PIC, LPIC, optional features, and any other relevant information contained in the customer service record.

Since Mile High has defaulted on its obligations under both the Recommended Decision and the Order, Qwest Corporation wholesale operations must now identify all the foregoing customer information and supply it to Qwest Corporation retail operations to permit the latter to provide the notice required under the Order and Transition Plan. Please advise me how soon the customer information can be assembled and delivered from Qwest Corporation wholesale operations to Qwest Corporation retail operations in a format suitable for a first class mailing as described below. Once Qwest Corporation retail operations have received the customer information, the actual notice must be provided, as described below.

Paragraph 2 of the Transition Plan continues:

Further, Mile High will send the attached Notice letter via First Class Mail in accordance with paragraph 5 below and will inform...the Commission as to when each customer's notice is, or will be, mailed. This Notice Letter contains the information required by 4 CCR 723-25-7.6. In addition, Mile High will mail by separate First Class Mail a notice to the board of county commissioners of each affected county, and to the mayor of each affected city, town or municipality. Not less than two business days after each notice mailing to its customers, Mile High will file with the Commission an affidavit attesting to its compliance with these notice requirements. The affidavit shall state the date on which notice was completed, the method used to give notice, and a copy of each notice shall accompany the affidavit.

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The Recommended Decision also ordered that “[t]he list of alternative providers attached to the Notice Letter defined in the Transition Plan shall be provided to customers of the...Joint Venture with the Notice letter.” (Decision No. R02-1263, Docket No. 02A-463AT, ¶15). Paragraph 11 of the same decision provides that “On Systems will be stricken from the list by stipulation of the parties approved herein.”

Those provisions collectively require that:

1. Notice be given in prescribed letter format, but it now must be modified because Qwest will be the sender and the dates need to be restated, roughly as suggested and depending upon the availability of information from Qwest Corporation wholesale operations and the time required to prepare the Notice Letters for mailing;
2. The Notice Letter must include the Office of Consumer Counsel’s proposed list of alternative providers, excluding On Systems Technology, LLC;
3. Each Mile High customer identified in the customer information must be sent an individual Notice Letter by first class mail;
4. A separate mailing by first class mail must be made to each board of county commissioners and mayors of any town served by Mile High; and;
5. Qwest must prepare an affidavit which includes a sample of the Notice Letter or notices provided and file it with the Commission within 2 days after a specific notification cycle is completed. The ordered notification cycle is explained below.

The Transition Plan describes the notification cycle, which contemplates four separate mailings to Mile High’s customers: approximately twenty-five percent (25%) of the customers will be included in each mailing. No timeline is specified for notification to boards of county commissioners or to mayors; however, explicit time limits for notifications to Mile High’s customers are contained in paragraph 5, which provides:

...Mile High will stagger the mailing of its Notice Letters such that customers are notified on a rolling basis by four proportionate separate mailings commencing with the first proportionate mailing on the second business day following the effective date of the Order...and continuing with the remaining mailings on the fourth business day following

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the mailing of the previous mailing. In so doing, the Effective Date will be 60 days after the last mailing date.

The timeline specified for the initial mailing has passed. The Order still contemplates a rolling notification, beginning with an initial mailing to approximately 25% of Mile High's customers, followed four business days later by a second mailing to another 25% of its customers, followed four business days later by a mailing to another 25% of Mile High's customers, followed four business days later by a fourth and final mailing to all remaining Mile High customers. All ancillary notifications to boards of county commissioners or mayors should be accomplished by that time. Once the last notification by mail is accomplished, the sixty day period leading up to termination of Mile High's service begins. Qwest has other obligations during that period that we will address separately from this correspondence.

During this notification process, it is important that Qwest create a procedure to identify, collect and preserve the documentation or information that is related to the costs that it incurs acting in place of the Joint Venture. According to the Recommended Decision, those costs are expenses that are recoverable from the Joint Venture, and we will quantify and pursue that claim on behalf of Qwest Corporation before the appropriate entities.

Once Qwest Corporation retail operations receive the customer information described by paragraph 2 of the Transition Plan, it is imperative for it to determine and implement the notification timeline as quickly as possible. Please advise me whether Qwest Corporation can meet the timeline that Mile High accepted and when implementation will begin. That information is critical to construct the actual Notice Letter that will be sent to Mile High's customers. I have included for your review a draft of the Notice Letter to be sent to Mile High customers and the list of providers that must accompany it. I would suggest that a brief conference call be set as soon as possible to address each of the foregoing issues, including what modifications to the Notice Letter will be necessary.

Please contact me at the numbers listed above so that we may discuss these matters as soon as possible.

Very truly yours,



Russell P. Rowe

RPR:tab

CAMPBELL BOHN KILLIN
BRITTAN & RAY, LLC
ATTORNEYS AT LAW

Mr. Mark Pitchford
Ms. Dana Crandall
February 13, 2003
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Cc: Paul R. McDaniel
Winslow Bouscaren, Esq.
Geri Santos-Rach
David Nocera, Esq.
Dian Callahan
G. Harris Adams, Esq.

EXHIBIT "E"

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: SERVISENSE.COM, INC.	DOCKET NO. FCU-02-17
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ORDER REVOKING CERTIFICATE

(Issued October 18, 2002)

On August 12, 2002, Utilities Board (Board) staff learned that a company using the name "The Iowa-Nebraska Telephone Company" (Iowa-Nebraska) was advertising local exchange services in Iowa without a certificate of public convenience and necessity, as required by Iowa Code § 476.29 (2001), or registering with the Board, as required by 199 IAC 22.23(3) (2002). Board staff contacted a series of representatives of Iowa-Nebraska and related entities, including Eastern Telephone, Inc. (Eastern), and ServiSense.com, Inc. (ServiSense). ServiSense is an authorized provider of local exchange telecommunications services in Iowa, holding a certificate of public convenience and necessity issued pursuant to § 476.29.

On August 27, 2002, as a result of the staff contacts, the Board issued an order to show cause, stating that it appeared Iowa-Nebraska and Eastern may be (1) offering land-line local telephone service in Iowa without first obtaining a certificate of public convenience and necessity from the Board, as required by § 476.29; (2) offering service without having a valid tariff on file with the Board, as required by

§ 476.4; (3) serving the former customers of ServiSense without having obtained each customer's authorization to change the service, as required by § 476.103(3) and the Board's rules at 199 IAC 22.23; and (4) providing service without an up-to-date registration form, as required by 199 IAC 22.23(3).

The Board opened this formal complaint docket pursuant to § 476.3(1) to investigate the actions of ServiSense, Iowa-Nebraska, and Eastern. Those companies were given an opportunity to show cause why the Board should not find them in violation of one or more of the statutory provisions cited above or such other provisions of chapter 476 and the Board's rules as may develop through the course of this proceeding. They were also given an opportunity to show why the Board should not take appropriate action if such violations are found, including revocation of ServiSense's certificate of public convenience and necessity, rejection of its tariff, prohibition of other service providers from billing on behalf of the violators or providing exchange access services to them, seeking an injunction or other appropriate relief in district court, or taking such other action as may be appropriate. Further, the Board ordered that ServiSense, Iowa-Nebraska, and Eastern may not bill any Iowa customers for any services currently being provided by any or all of them in violation of Iowa law and that such arrangements must continue until further order of the Board. The companies were directed to file with the Board complete lists of their Iowa customers in order to allow for notification of the customers that they are not required to pay for any services being provided in violation of Iowa law.

On September 6, 2002, Eastern and ServiSense filed a response to the order to show cause, stating that ServiSense was issued a certificate of public convenience and necessity on September 21, 2000. On August 20, 2001, ServiSense filed a petition under Chapter 11 of the Bankruptcy Code in the U. S. Bankruptcy Court, District of Massachusetts, and on February 11, 2002, as a part of that proceeding, Eastern purchased substantially all the assets of ServiSense.

Eastern and ServiSense further state that on June 20, 2002, Eastern entered into a Marketing and Operating Agreement with OnSystems Technology, LLP (OnSystems). As a part of that agreement, Eastern authorized OnSystems or its nominee (in this case, Iowa-Nebraska) to acquire customers under the reseller ID account of OnSystems and pursuant to ServiSense's certificate. The customers were to remain on the ServiSense system until such time as Iowa-Nebraska received appropriate authority, when the customers would be transferred. The agreement specifically required that OnSystems and its nominees be in compliance with all appropriate regulatory requirements.

Eastern and ServiSense state they learned "substantial disturbing information about which [they were] previously completely unaware" when they received a letter from Board staff on August 23, 2002 (attached to the order to show cause as Attachment A). In response to the staff letter, on August 26, 2002, Eastern and ServiSense sent a letter to OnSystems informing OnSystems of the staff letter and instructing OnSystems to refrain from any and all marketing to and or provisioning of

any more customers "under our reseller code, pending final and satisfactory disposition of these matters by the various regulatory agencies." A copy of the letter was attached to the response. Eastern and ServiSense represent that the "letter, together with follow up discussions, has effectively terminated all marketing to and provision of customers in the State of Iowa before any [OnSystems] customers were provisioned." (Emphasis in original.)

Eastern and ServiSense asserted that as a result of these actions, any potential harm to Iowa residents from the circumstances that are the subject of this investigation has been removed. They stated that ServiSense currently has only one customer in Iowa; that Iowa-Nebraska is, to the best of their knowledge, no longer advertising or marketing in Iowa (or anywhere), and that Iowa-Nebraska has no authority to provision a customer through ServiSense. Eastern and ServiSense conclude that all of the Board's concerns about Eastern or ServiSense should be alleviated and no further Board action is necessary.

The Board did not agree, finding that the response of Eastern and ServiSense failed to address all of the relevant issues, did not provide sufficient information, and was insufficient to satisfy the Board that Eastern, Iowa-Nebraska, and ServiSense are not continuing to violate Iowa law. Accordingly, on September 16, 2002, the Board gave notice to ServiSense that its certificate of public convenience and necessity would be revoked, pursuant to Iowa Code § 476.29(9), unless ServiSense (or Eastern, on behalf of ServiSense) filed a request for hearing or sufficient

information to establish, without a hearing, that the certificate issued to ServiSense should not be revoked. In the absence of the necessary documents or a request for hearing, the Board intended to revoke the certificate of public convenience and necessity issued to ServiSense and direct all certificated local exchange service providers in Iowa to cease providing facilities to and exchanging local communications traffic with ServiSense.

On September 23, 2002, Eastern and ServiSense filed their response to the Board's order of September 16, 2002. The response included copies of the bankruptcy court's order authorizing the sale of the assets of ServiSense; the February 1, 2002, "Management Agreement" between ServiSense and Eastern; the June 20, 2002, "Marketing & Operating Agreement" between Eastern and OnSystems; and a September 12, 2002, letter from Eastern to OnSystems providing notice of Eastern's termination of the Marketing & Operating Agreement. Eastern alleged that these documents, combined with the absence of any demonstrated harm to any Iowa resident, were sufficient to show Eastern's intent to "operate within the laws and rules of the State of Iowa." Eastern and ServiSense did not request a hearing.

The Board finds the response filed by Eastern and ServiSense is inadequate to prevent revocation of ServiSense's certificate. The response does not demonstrate an intent to operate in a manner consistent with the laws of the State of Iowa; instead, it demonstrates that Eastern, OnSystems, and ServiSense have made

no effort to comply with the applicable statutes and regulations. Instead, the response demonstrates that Eastern and ServiSense have knowingly operated illegally in Iowa and have made material misrepresentations to the Board in their pleadings in this docket.

First, in the September 6, 2002, response filed by Eastern and ServiSense, they state that the Bankruptcy Court order approved the continuing operation of ServiSense under the management of Eastern until Eastern could obtain its own authorizations, give appropriate notice to customers, and take other steps to effect the transfer. However, the Bankruptcy Court order attached to the September 23, 2002, response makes no mention of continued operation of ServiSense; it is silent with respect to the matters that Eastern and ServiSense claim it addressed. Moreover, the Bankruptcy Court order is dated February 12, 2002, over eight months ago, yet Eastern still has not taken any steps to obtain its own certificate of public convenience and necessity in Iowa. If Eastern truly intended to "operate within the laws and rules of the State of Iowa," it would long ago have filed an application for transfer of the certificate.

Second, the Management Agreement between Eastern and ServiSense indicates that they have applied to various unidentified state regulatory agencies for authorization to transfer Eastern's certificates. These applications are referred to as the "Commission Consents." Further, Article 4.1 of the Management Agreement commits the parties to work diligently to obtain for Eastern the necessary

Commission Consents. These provisions demonstrate that Eastern and ServiSense are, and were, aware of their obligation to transfer Eastern's certificate, but no filing has ever been made with the Board for that purpose. The acknowledgement of the obligation to transfer the ServiSense certificate, combined with the failure of the parties to seek that transfer at some point within the last eight months, all without any explanation, does not demonstrate an intent to comply with Iowa laws; instead, it demonstrates a complete and total disregard for the law. These actions require that the Board revoke the certificate issued to ServiSense.

Furthermore, the inaccuracies in the responses of Eastern and ServiSense continue to develop. For example, on October 11, 2002, the Board's customer service staff received a verbal customer complaint stating that about 45 days before, the customer switched her local and long distance service from Qwest Corporation to "Phone Company Services Group," but when the service was changed the service was unusable and the customer was unable to reach anyone at the Phone Company Services Group's customer service number, 866-761-5580. Board staff inquired into the matter and determined that the customer had changed service in response to a television advertisement for Iowa-Nebraska and that Qwest's records indicated the customer's telephone number was a resold account assigned to ServiSense. It is possible that the customer's order was in process at the time Eastern and ServiSense purported to terminate their relationship with OnSystems and Iowa-Nebraska, but even so the apparent failure of Eastern and ServiSense to take steps

to prevent customer transfers, with predictably unsatisfactory results, is a matter of great concern. The Board does not rely on this complaint as a basis for its revocation of the certificate issued to ServiSense, but concerns such as this will have to be explained, in detail and to the Board's complete satisfaction, before any future certificate will be issued to Eastern, ServiSense, Iowa-Nebraska, OnSystems, Phone Company Services Group, or any company related to, affiliated with, or sharing management with any of those entities.

IT IS THEREFORE ORDERED:

1. Pursuant to Iowa Code § 476.29(9), ServiSense.com, Inc., is notified that the certificate of public convenience and necessity issued to ServiSense on September 21, 2000, and identified as Certificate No. 0223, is hereby revoked.
2. ServiSense shall continue to provide local exchange and intrastate interexchange telecommunications services to any and all customers it may have in Iowa, without charge, for a period not to exceed 60 days while the customers are notified that they must change their service providers.
3. Qwest Corporation is directed to work with staff to identify all of the Iowa customers of ServiSense so that Board staff may contact those customers and explain to them the need to change their telecommunications service providers.
4. Beginning 60 days from the date of this order, all local exchange carriers in Iowa are directed to cease providing services to ServiSense.com, Inc., Eastern Telephone Company, Iowa-Nebraska Telephone Company, OnSystems

DOCKET NO. FCU-02-17
PAGE 9

Technology, LLC, and/or Phone Company Services Group for resale to Iowa local exchange telecommunications customers.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

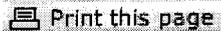
ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 18th day of October, 2002.

EXHIBIT "F"



Close Window

From westword.com
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Con Air

Mile High Telecom promised to be an alternative to Qwest, but the line is going dead.

BY STUART STEERS

Travis Credle was intrigued.

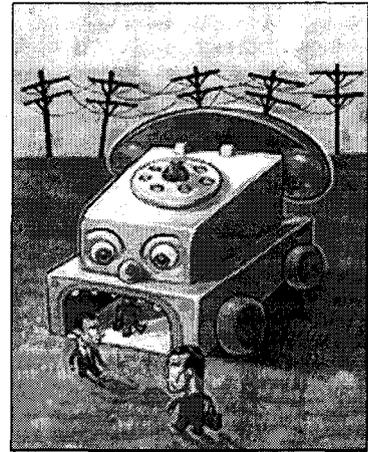
The man sitting across the table from him was outlining the problems with local telephone service 1,800 miles away, in Denver. He was telling Credle about the entrenched provider, Qwest, and its dismal customer-service record. About how the Colorado Public Utilities Commission had ordered the Baby Bell to refund \$12.7 million to its customers in 1998. How it was the perfect time for a new company to give Qwest some much-needed competition. How the investment group he represented -- Telecom Advisory Services Inc. -- would be doing just that in Colorado, Arizona, Minnesota, Iowa and other states. That Mile High Telecom would be a once-in-a-lifetime opportunity.

It was a performance Frank Southerland was putting on all over Morehead City, North Carolina. He had known Paul Meyer, one of Credle's best friends, for more than four decades, so when Southerland invited Meyer to invest, it was only natural that his friends would be interested as well. Word traveled fast in the close-knit, affluent coastal community, which serves as a jumping-off point for tourists heading to Cape Lookout National Seashore and a string of nearby beach towns.

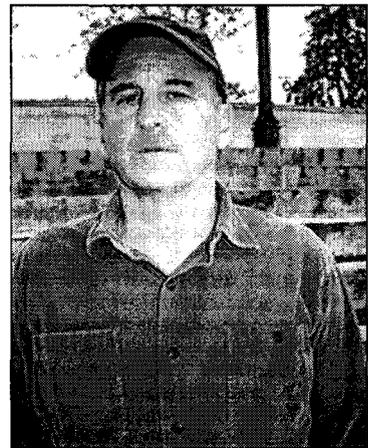
"He took about ten of us out to dinner," Credle says in his thick Tarheel drawl. "He realized there was a gold mine here, and he courted us. He said he wouldn't put family and friends' money in his other partnerships in the oil-and-gas business, but this looked like a sure hit. Who would present something like this to friends of forty years without believing it?"

It didn't hurt that Southerland liked to recall his own upbringing in the small North Carolina town of Goldsboro: It offset his designer clothing, gold jewelry and Florida residence. He also brought in the big talent, having Tim Wetherald, Mile High's managing partner, and Marc Shiner, a partner in Telecom Advisory Services, meet with potential investors in the spring of 2001. Wetherald also posted a letter on the company's Web site, reminding investors just how badly he believed Colorado customers needed another local telephone-service provider.

"Just as the long-distance monopoly by AT&T was broken up and along came MCI, Sprint and the others, we will be in a position to



Chris Ryniak



Mark Manger

Travis Credle says Tim Wetherald scammed him and other Mile High investors out of \$1.4 million.

compete head to head with Qwest for the millions of residential and commercial phone customers throughout the state of Colorado," he wrote. "Fortunately for us, Qwest has the worst customer service rating in the nation. We will capitalize on this trend by building a company that focuses on the customer. The timing is right, the industry is exploding, and with the right management team and partners, the sky is the limit!"

The trio's efforts sold Credle and nine other residents, who were told that fifty units worth \$20,000 apiece would be available in Mile High Telecom and each of its sister companies being set up in a half-dozen other states. Credle picked up about ten shares, investing \$200,000, and he estimates that Telecom Advisory Services eventually raised a total of \$1.5 million just in Morehead City for the projects. (While Telecom Advisory Services was the group spearheading the sales pitch for all the states, each of the phone companies is an independent business with its own investors.)

"The timing was perfect for them, because the market was down, and people were seeing their 401(k)s go down," says investor Bernie Baake, a retired Morehead City engineer. "I thought, 'I'm losing money anyway -- what the heck.'"

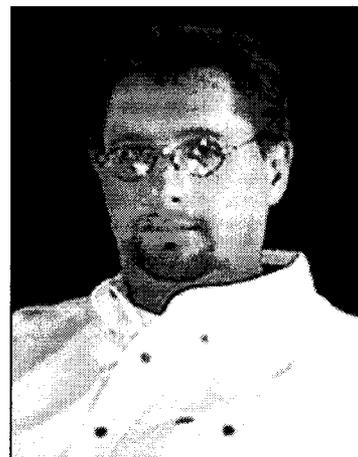
Hundreds of miles away, a Minnesota man received a random fax about Mile High Telecom, which was scheduled to launch service in July 2001, and wanted to find out more; like Coloradans, Minnesota telephone customers are essentially Qwest-dependent.

"I called and talked to Southerland," says Steve Petersen. "He told me getting involved in this was like having a license to steal. I knew that people were dissatisfied with Qwest, and I knew we had a chance to land a lot of customers."

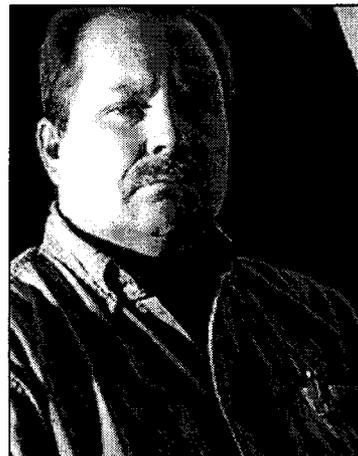
By March 2001, the suburban Minneapolis bill collector had invested a total of \$200,000 in start-up telephone companies in Colorado, Arizona and Minnesota.

"Frank Southerland just called up one day out of the blue," says Robert Brown, who lives in Hannibal, Missouri, and runs a trucking company. "He said there were fifty units for sale, and he'd never get a dime until we all got our money back. Old Frank was pretty smooth. Southerland said that in a year and a half, we'd have our money back and then get monthly or quarterly checks. He said that when they got to 15,000 customers, that would be the magic number."

Brown figured that if an upstart phone company could be profitable with just a few thousand customers, it might be a gamble worth taking. He eventually anted up more than \$100,000 in new telephone companies in Colorado, Arizona, Washington and Minnesota.



Tim Wetherald



Mark Manger
Steve Petersen is trying to salvage Mile High Telecom.

Most of the 65 investors in Mile High Telecom were successful small-business men who were excited by the deregulation of the telephone industry and looking for investments outside of the tanking stock market. From them, Southerland raised \$1.4 million for the Denver operations. But Credle says classic "boiler room" sales tactics were used to seduce backers, with a crew of salespeople working out of a small Boca Raton office and reading from a script. Seasoned

telemarketers in such operations usually make large commissions pitching "can't miss" investments with big returns. They often target elderly people with money in 401(k)s or retirement accounts and exchange lists of potential prospects with other telemarketers.

"They'd want to know if you had the funds to invest within two weeks," says Credle, who is a successful tennis-court and recreational-facility contractor in Morehead City. "They would say, 'I only have a half a unit left' and then call back and say somebody backed out and they can sell you a whole unit. They were real slick talkers and could make you believe anything."

Telecom Advisory Services' promoters, including Southerland and Shiner, even flew several investors to Denver to see Mile High's busy headquarters building on Parker Road. "Everybody who went to Denver came back with a positive story on Mile High's employees and the phones ringing off the hook," Credle says. "They were doing a lot of telemarketing. They were putting ads in the papers. Mike Rosen was promoting it on his radio show. They had a whole floor in an office building, and 75 employees."

("I liked the idea that there was competition with Qwest for telephone customers," says Rosen, who was paid a standard fee for his services. "My producer signed up [with Mile High] and has been quite satisfied with the service." Rosen has recently done spots for 2U Wireless, another telecom venture promoted by Wetherald.)

The company was structured as a joint partnership, with 70 percent owned by the investors -- five of them, including Credle and Petersen, served as managing partners -- and 30 percent owned by On Systems Technology, the management company running Mile High's day-to-day operations. On Systems is owned by Wetherald, Shiner and several others; what investors weren't told was that it was once called Voice Networks Inc. and engaged in "toll-bridging," the practice of forwarding telephone calls to evade long-distance charges. In 1999, US West accused the company of defrauding it of more than \$1 million. The PUC investigated and found that Voice Networks -- whose executive vice president was Tim Wetherald -- had deceived US West. The company declared bankruptcy and was reorganized as On Systems Technology.

Now Qwest (formerly US West) leases space on its telephone network to Mile High Telecom, essentially its former nemesis, under the terms of the federal Telecommunications Act of 1996, which required Baby Bells to open their systems to competitors. Mile High buys the space at wholesale prices and resells the service to residential and business customers, offering bargain rates of just \$14.91 for a basic line and long distance for seven cents a minute. By last spring, the company, advertising itself as a spunky rival to Qwest, had more than 10,000 customers.

That growth convinced most investors that they had put their money in a promising venture that would ultimately reap big profits. Twice a month, they got e-mails from the company boasting about the number of new customers signing up for service.

"The original financial projections called for the first partnership [Mile High] to have its first profitable month in June," Southerland e-mailed investors in July 2002. "Actually, the first profitable month was April, two months ahead of projections. About 15,000 customers should be in billing by August, according to Tim... The first dispersal of funds to the Mile High partnership may occur at the end of the third quarter of this year. If you wish to be in the Iowa/Nebraska partnership, give me a call as it is filling up."

Steve Petersen was so impressed that he called Wetherald in June and told him he had a million dollars to invest. Wetherald jumped on a plane to Minneapolis. But Petersen, who hadn't met Mile High's managing partner in person before, became immediately distrustful. Even though he's soft-spoken and friendly in the way Minnesotans are famous for, Petersen prides himself on being able to see through lies. "Being a bill collector, you learn to read people pretty fast," he says. "I called my wife and said, 'These people are bad.'"

He started doing a search on the backgrounds of many of the people involved in Mile High, and what he found was stunning. Genesis Telecommunications, a long-distance service provider that Wetherald had promoted in Washington state, had collapsed amid allegations of fraud, and a 1995 consent decree effectively barred him from doing telecom work in that state. And in 1991, Oregon obtained a three-year injunction against Wetherald, preventing him from doing business there after two telecom firms he promoted declared bankruptcy.

Last March, the U.S. Securities and Exchange Commission filed charges in federal court against Shiner, alleging that he promoted investments in a bogus California energy company that defrauded 580 investors of more than \$10 million. He had also spent four months in federal prison for tax evasion.

But Petersen says rather than deny any bad intentions, Telecom Advisory Service's sales team invited him to join them. "I flew to Denver in July, and they took me out and wined and dined me."

At Morton's steakhouse in lower downtown, Petersen shared dinner and a cigar with Shiner. As he recalls, "When I said, 'I have a million bucks to invest,' [Shiner's] eyes glazed over, and he said, 'We have a good use for that; we need to get you involved.'"

Petersen says he thinks Shiner believed he was on their side; instead, he began trying to contact other investors, some of whom didn't want to believe they'd been had.

"I e-mailed some of the investors," he recalls. "I got this nasty e-mail back from Travis. He said, 'Why are you sending out this unsubstantiated stuff?'"

But others had also begun to suspect that Mile High Telecom and the other companies were frauds. Engineer Baake says he became suspicious after meeting the 58-year-old Shiner, who lives in Boca Raton and fancies black turtlenecks, dark suits and plenty of hair gel. "He wore ostentatious gold rings. I wasn't born yesterday," he says.

Baake began inquiring about how the money raised for the telecom companies was being used; he says he elicited different responses depending on whom he asked. "One said the money went into software development, and another said it went into sales, and someone else said it went to recoup money he expended personally. There were three different stories about where the money went. That was in June, and I knew we were in trouble."

In July, just after Southerland's upbeat e-mail seeking additional investments, Baake called the Colorado Public Utilities Commission and discovered that Mile High Telecom had never been properly licensed to operate in Colorado and was at risk of being shut down. He tape-recorded his conversation with the PUC staffer and took it to a meeting of investors in Morehead City.

"I played the tape for several of the investors, and their jaws dropped open," Baake says. "You could see the realization start to sink in, but even then, people were reluctant to admit they'd been scammed."

Credle was devastated.

"They steal your trust and make you feel like an idiot," says the former commercial fisherman. "This has disrupted my life and my business."

Petersen and Credle vowed not to creep away and lick their wounds. Instead, they're trying to wrest control of Mile High Telecom from Shiner and Wetherald.

"I think we can still salvage this thing," Petersen says. "A lot of customers have told us they want to stay with us. We could pick up the pieces and move forward. That's the only way the investors have any hope of recovery."

But the company's current management isn't giving up, either. Shiner claims he's being slandered. "There's a group of people out of Morehead City spearheading this attack," he says. "It's character assassination. This is a conspiracy to steal our 30 percent interest in the project."

Southerland says he's being unfairly smeared as the bad guy when he was just a salesman working on commission who genuinely thought the phone companies were a good investment.

"I had some close friends involved in this," he says. "I thought it was as good as anything I'd ever seen, at least on paper. I thought it had virtually no downside. Until Steve Petersen and Travis Credle started this, Mile High had 10,000 customers, and everybody seemed satisfied. Now I can't get any information from either side. I'm not able to participate and find out what's going on, even though I was the person who sold most of them their units."

Regardless of who has control, Mile High Telecom is in trouble with the PUC. The company never filed the proper documents to offer telephone service in the state, and the PUC now says Mile High used fraudulent behavior when interacting with it. Plus, Qwest says the company owes it more than \$4 million for the use of its network and has asked the PUC for permission to discontinue service.

However, Wetherald contends that Qwest overbilled Mile High for \$1.8 million and owes the company \$3 million in "quality of service credits" for "subpar" service.

Qwest insists there were no service-quality problems -- although its own recordkeeping has been in the news with a potential bankruptcy, restated financials and government investigations of its accounting practices. "We absolutely dispute the fact that we owe them any service-quality credits," says Qwest spokeswoman Rebecca Tennille.

To further complicate matters, Mile High filed for Chapter 11 bankruptcy protection before Christmas, which Wetherald says he did so that the company would have a chance to reorganize and delay Qwest's request to disconnect them from its network. And On Systems Technology is suing Credle, Petersen and Premier Communications -- another upstart phone carrier that had agreed to absorb Mile High's operation -- claiming they've conspired to seize control of the business. They have countersued, alleging that Wetherald, Shiner and the other promoters conspired to defraud investors.

"The counterclaims against me are laughable and outright lies," Wetherald says. "When this gets in front of a judge, they'll have a lot of problems. As far as Credle, he may be an ignorant redneck who is totally pissed off about things he doesn't know about. Steve Petersen saw an opportunity to get his fingers in this. He has a motivation to do this that has nothing to do with benefiting the investors. They've destroyed a business that had 14,000 customers. These guys have created a lot of damage; they're spreading disinformation. Most of what they tell you is horse crap. Mile High is where it is because of their interference."

Shiner agrees, insisting that "they set out to destroy the joint-venture agreement. This is a case of simple greed. They wanted to steal our 30 percent interest. We were billing over half a million dollars a month. We had 14,600 customers in eleven months. That doesn't seem like a scam. Petersen and Credle were both in the office numerous times to see if we were for real. We had over 100 people working there. This was a very real business."

A very real business about to lose its customers back to Qwest. In December, the utilities commissioners delivered a blow to investors when they ruled that Mile High's customers should be

reassigned to Qwest once the company shuts down. Credle and Petersen hoped the agency would assign them to Premier Communications, but the commissioners were skeptical that Premier would have the financial backing to operate a phone company for long.

All of this has created a legal tangle that leaves even lawyers scratching their heads. And that, Credle says, was exactly Shiner and Wetherald's strategy. He thinks they plan to drag out Mile High's demise as long as possible to continue pocketing the revenues from customers without paying Qwest.

After investors contacted the PUC, the agency began examining Mile High's dealings with it. In a report issued in October, the PUC staff charged Wetherald and others involved in operating Mile High with deceiving the agency into believing they had authority to sign documents on behalf of the Mile High partnership.

"This case presents a unique situation because of the potential that misrepresentations to and fraud upon the commission have been committed by an individual, under the watch of, and perhaps with the complicity of, a law firm and its attorneys," wrote the staff.

The report accuses Wetherald and his attorney, Michael Glaser, of intentionally misleading the PUC by submitting a letter on behalf of the Mile High Telecom partners signed by Leon Swichcow, one of the company's promoters. The letter stated that the partners had given Wetherald permission to enter into agreements with the PUC on their behalf, even though Petersen and Credle say that they never approved anything of the sort and that Swichcow misrepresented himself as a partner in Mile High Telecom.

"It now appears that Mr. Swichcow was not in a position to provide actual authority to Mr. Wetherald and that the Swichcow letter was a sham designed to mislead staff and the commission," reads the report, adding a recommendation that the commissioners reprimand Glaser and his firm, Lottner Rubin Fishman Brown & Saul.

But Glaser's attorney, Paul Cooper, says the PUC is targeting his client unfairly, since there was no way for Glaser to know that Swichcow didn't have signatory authority. "They're mad at the wrong people," Cooper says. "It's a kill-the-messenger kind of thing."

(Glaser no longer works for Lottner Rubin, and a spokesman for the firm says they have been advised not to discuss the matter publicly.)

But the commission saved most of its venom for Wetherald, with the report even suggesting that the Denver district attorney be asked to file criminal charges against him.

"Staff believes that Mr. Wetherald has shown a disdain and contempt for the authority of the commission that is unmatched and unprecedented," the report reads. "Therefore, staff believes that the commission would be well justified in...ordering that Mr. Wetherald has lost the privilege of holding a {license} issued by the commission to operate in this state, and that his involvement in any manner with a commission-regulated public utility in this state so taints such utility that it should be forbidden from operating in this state."

For his part, Wetherald maintains he's been wrongly accused by the agency.

"The PUC staff did not act properly in any of this," he says. "The staff took things at face value and didn't bother to read the agreements, which give me the authority to do what I did."

Despite the PUC staff report's angry tone, the agency has little enforcement power. To crack down on scam operators, under current law the PUC has to go through the courts, a process that could take two years, and the agency lacks the authority to impose fines without a court order. The report itself alludes to this weakness, saying, "It is imperative that however incapable the commission feels it may be of imposing a sanction or meaningful remedy against bad actors, that it not refrain from identifying who the bad actors are for future reference."

Part of the problem is that the PUC is still operating under laws from the days of heavily regulated monopolies and is unprepared to deal with potential swindlers who see the opening of the telephone market to competition as a field day for fraud. "The commission staff is made up of analysts and attorneys who are experts in rate cases, but they don't have a staff of investigators and enforcement folks who can investigate these kinds of activities," says Dian Callaghan, director of administration for the state Office of Consumer Counsel. "What would be useful is for the commission to have authority to issue a cease-and-desist order. They don't have that. There's little they can do in a short period of time."

In the future, Callaghan predicts situations like Mile High Telecom's will become more common, and the PUC's role will have to change.

"The commission's role will become more and more that of enforcement as the market becomes less regulated," she says. "Some of what is happening is a by-product of a competitive marketplace. The PUC needs to have the tools to deal with this."

Especially with con artists moving into the deregulated utility business all over the country. California's deregulated energy market has produced the best-known scams, with huge companies like Enron playing leading roles. But small-scale operators have also used the promise of big profits in the California power market to separate investors from their cash.

In the U.S. Securities and Exchange Commission case against Shiner and several other Florida-based promoters over a bogus plan to sell electricity in California, the complaint indicates that "one investor was told that the only risk was that Los Angeles could fall into the Pacific Ocean. Many investors were elderly and rolled over money from IRA and 401(k) accounts."

Shiner claims that his involvement in the deal never went beyond providing sales leads.

"I was not involved in sales. I sold leads, period," says Shiner. "I did not have any contact with investors. That case will go to trial in two years, and we believe we will prevail."

But he hasn't always. Aside from his 1998 stint in federal prison for tax evasion, in 1986 the SEC barred Shiner from association with any stockbroker or investment company for five years, saying he had failed to disclose a 1984 Massachusetts conviction for insurance fraud and larceny.

"About eight states have taken action against Shiner for the sale of unregulated securities in their states," says Daniel Sotler, an investigator for the Florida Office of the Comptroller. "For the last ten years, Shiner has created three new companies every year, and they always have the same address. After the deals collapse, there's nothing left."

The money raised goes to hefty sales commissions for the boiler-room staff and to Shiner and his associates, Sotler says. They usually lease office equipment, cars, and even their own homes so there are no hard assets, and the paper trail left behind is invariably complex and almost impossible to make sense of.

Shiner refuses to discuss his other projects.

"I have several different business ventures," he says. "To discuss what I do is not germane. Suffice it to say I'm a businessman and have been in business for several years."

Florida has filed charges against several of the people who worked with Shiner on the California power-company promotion, but Sotler says most of Shiner's deals are intentionally smaller. Usually about 100 shares are being hawked at \$20,000 each. (Mile High had only fifty shares available at that price.)

"They've formed a half-dozen partnerships all along the same lines," Sotler explains. "They try to limit it to 80 to 120 [investors] and a million and a half dollars."

By setting up operations in multiple states and keeping the amount raised below a certain level, the promoters hope to evade the attention of federal law enforcement, Sotler says.

"It's a minimalist approach. If you walk into an FBI office and say, 'They took over a million from us,' they'll say, 'Sorry, but we don't have a lot of resources.'"

When state and federal politicians deregulated the telephone industry in the mid-1990s (Colorado started the process in 1995), they promised that consumers would soon enjoy bargain rates for local telephone service as old monopolies disappeared and new competition emerged.

It hasn't worked out that way. While businesses in places like downtown Denver and the Denver Tech Center are courted by several phone companies that spent millions putting fiber-optic lines in place to serve those areas, most small-business and residential customers in Colorado are still at the mercy of just one phone carrier.

Callaghan says only about 7 percent of residential customers in Colorado have a choice for their local phone service. "It's discouraging," she says. "It's fair to say that competition for the residential market is nascent competition at this point."

While a few companies -- notably AT&T Broadband and McCleod USA -- offer residential telephone service in some parts of Colorado, there has been no rush to provide consumers with a real alternative to Qwest. The recent financial crisis in the telecom industry has meant that money to build new networks has disappeared.

"If the money's not available for investment, it's not going to happen," notes Callaghan.

The Baby Bells are bitterly opposed to having to open their networks and have lobbied in Washington against the requirement for years. The Bush administration appears ready to give them what they want, as the Federal Communications Commission is reportedly preparing to abolish the requirement. FCC Chairman Michael Powell -- son of U.S. Secretary of State Colin Powell -- has said he thinks it's wrong for the established phone companies to have to share their lines with competitors. Powell is adamant that would-be telecom companies need to build their own facilities rather than depend on the lines built up over decades by government-sanctioned monopolies. However, with the telecom industry decimated by the bursting of the Internet bubble, the money to build rival networks is nowhere in sight, and many believe that excluding competitors from using Qwest's lines would be a huge mistake.

"That could wipe out residential competition," Callaghan warns.

While the odds are against Mile High, Petersen and Credle still believe it can be a viable company.

"The customers are the only equity we have to try to recoup our investment," Credle says. "The original money we put in has long since disappeared, and there's \$4 million unaccounted for in non-payment to Qwest."

However, the PUC's December decision to shut down Mile High and transfer its customers back to Qwest may end all hope for the investors. They thought the deal they had negotiated with Premier was a good one for customers and are angry that the utility commissioners wouldn't go along with the idea.

"I'm disappointed in the whole process with the PUC," Credle says. "We were hoping Premier would be made the default carrier. We felt like they were a viable group to handle the customers."

Mile High is still operating, and the bankruptcy filing may allow it a respite before Qwest finally pulls the plug, but it seems unlikely that the company will last much longer.

The investors are still hoping to get control of start-up companies in other states; Petersen believes they may soon win a license to operate the Minnesota Phone Company, which has about 800 customers. However, that may be a mixed blessing, as the company is being sued by several customers who allege that they found hundreds of dollars in bogus charges on their bills.

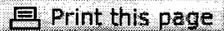
"It's a really screwed-up mess," Petersen says. "I think the Minnesota Phone Company can survive with what little they have left. When I invested, I didn't expect to wind up running the company."

In Iowa, the state utilities board, which has greater enforcement power than the Colorado PUC, shut down the Iowa-Nebraska Phone Company last August after finding that the company had advertised local telephone service without obtaining a license to operate. The Arizona Corporation Commission has also scheduled hearings this month on the Arizona Phone Company, looking at allegations of improper licensing and a failure to pay Qwest \$2.8 million.

In Morehead City, Credle often concludes his construction deals with a handshake and doesn't bother to draw up contracts. Now he feels like he's had an education in the seamy side of business. "I've looked at a lot of crooks the last few months," he says.

But to Credle, the lowest point in the whole affair may have come in November 2001. That's when Mile High promoters faxed many of the investors a copy of a \$5,000 check they claimed to have sent to a fund set up to benefit the widows and children of the New York City firefighters who lost their lives at the World Trade Center.

"I called the firefighters' association, and they said they never got the check," he says.

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Do Not Pass Go

BY STUART STEERS

Promoters of Mile High Telecom are in trouble with the law -- again.

On Monday February 10, U.S. District Court Judge William Zloch of Florida issued a temporary restraining order, at the request of the Securities and Exchange Commission, against Marc David Shiner, Leon Swichcow and Tim Wetherald, prohibiting them from selling any more shares in Mile High Telecom and charging them with defrauding hundreds of investors of more than \$7 million ("**Con Air**," February 6).

The SEC complaint also names Telecom Advisory Services, the Florida-based company in which Shiner was a partner, saying that Shiner and Swichcow, the company's president, searched out small-business owners and used boiler-room sales tactics to convince them to invest in upstart phone companies in Colorado, Arizona, Washington, Minnesota, Iowa and Oregon. Wetherald is the Denver-based managing partner for Mile High Telecom.

"The defendants raised in excess of \$7.6 million in an elaborate scheme involving a series of interlocking companies that they secretly controlled, siphoning off the vast majority of funds raised for their own use," the complaint reads.

The SEC alleges that the defendants violated federal securities law by claiming that Mile High Telecom was a successful phone company despite being in financial trouble and never having been properly licensed to operate in Colorado. It also says that promoters paid exorbitant commissions and "management fees" to companies controlled by the defendants and that they failed to disclose the "negative regulatory histories" of Shiner, Swichcow and Wetherald.

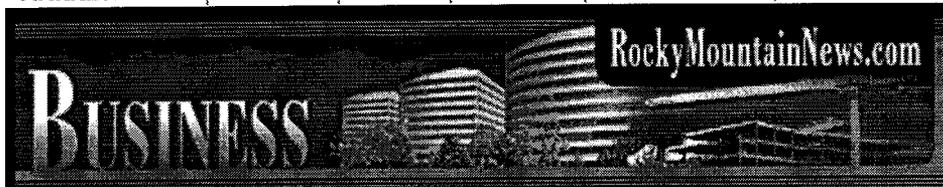
Investors Travis Credle and Steve Petersen have attempted to wrest control of the local telephone service provider from Shiner and Wetherald since discovering that Mile High Telecom was not licensed to do business in Colorado. They also found that Shiner had spent time in federal prison for tax evasion and that a 1995 consent decree in the state of Washington effectively prohibits Wetherald from doing business there. Wetherald and Shiner sued the two investors through On Systems Technology, the management company they own that controls Mile High's day-to-day operations, saying they conspired to seize control of the business. Credle and Petersen countersued, claiming the two promoters tried to defraud investors.

The case raises questions about the ability of regulators in Colorado to adequately protect consumers and investors in an age of utility deregulation. Under current law, the Colorado Public Utilities Commission often has to go to court before it can issue fines, a process that can take as long as two years. For much of the past year, the PUC has struggled to get Mile High to follow state regulations but ultimately had little power to issue sanctions against the company. Colorado's utility laws are weaker than those in some other states; Iowa regulators were able to shut down Mile High's sister company there in a matter of weeks.

Regardless of who earns the right to Mile High Telecom, the company may owe rival Qwest \$4 million for leasing space on its network, and the PUC has granted Qwest permission to discontinue service to Mile High. As a result, the company's 10,000 customers will soon have to find another phone carrier.



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Promoters of Colorado telco swindlers, SEC charges

By John Accola, Rocky Mountain News
February 18, 2003

Federal regulators are suing the promoters of a struggling Colorado telco and several sister phone companies, alleging \$7.6 million raised from outside investors is in "serious risk of diversion and theft."

In a civil complaint filed last week in Florida federal court, the Securities and Exchange Commission contends Aurora-based Mile High Telecom is the only one of the six phone companies with an operating history, "albeit negative."

The SEC alleges that three executives used a Boca Raton brokerage house called Telecom Advisory Services Inc. to sell unregistered securities in six limited-liability partnerships formed to compete against Qwest Communications. Instead of using the proceeds to fund the partnerships, the men siphoned most of the money for their personal use, the complaint said.

A federal judge in Miami has entered a temporary restraining order against the brokerage and the three individuals: Timothy Wetherald, managing partner of On Systems Technology of Aurora, and two South Florida men - Marc David Shiner and Leon Swickow, co-owners of Telecom Advisory. The order has effectively frozen the defendants' assets and prohibits them from accepting funds from investors.

Wetherald, whose company manages Mile High Telecom, said the allegations against him are groundless. "Mile High Telecom is a real business, and every penny given to me was spent to develop the business," he said. "There was no misrepresentation or fraud. There were no non-disclosure issues."

Mile High Telecom, which began service in metro Denver in July 2001, is now in bankruptcy court, with Qwest Communications claiming unpaid bills of \$4 million or more.

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Advertised as a low-cost alternative to Qwest, the company garnered 14,000 customers in its first year. Business, however, suffered from strained relationships with the Colorado Public Utilities Commission over filing requirements as well as billing and service disputes with Qwest.

On Monday, Wetherald said Mile High Telecom is still operating, but with half the number of customers it had a year ago. Travis Credle, a North Carolina businessman who invested \$200,000 in Mile High and three other phone partnerships, is spearheading a campaign to oust Wetherald and reorganize Mile High under another alternative phone company, Douglas County- based Premier Communications.

The SEC complaint alleges Shiner and Swichkow used "boiler-room tactics" at Telecom Advisory to market the partnerships to unsuspecting investors. On Systems Technology, 33 percent owned by Wetherald, was set up to provide technical expertise to manage the individual phone companies in Colorado, Arizona, Washington, Minnesota, Oregon, Iowa and Nebraska, said the complaint.

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