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BEFORE THE ARIZONA CORPORATION COMMISSION

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

Arizona Corporation Commission  
**DOCKETED**  
MAY 08 2003  
DOCKETED BY: *CR*

2003 MAY -8 P 4: 30  
AZ CORP COMMISSION  
DOCUMENT CONTROL

UTILITIES DIVISION STAFF,  
Complainants,  
vs.  
LIVEWIRENET OF ARIZONA, LLC,  
Respondents,  
THE PHONE COMPANY MANAGEMENT  
GROUP, LLC,  
Respondents,  
THE PHONE COMPANY OF ARIZONA JOINT  
VENTURE d/b/a/ THE PHONE COMPANY OF  
ARIZONA,  
Respondents,  
ON SYSTEMS TECHNOLOGY, LLC, and its  
Principles, TIM WETHERALD, FRANK TRICAMO  
and DAVID STAFFORD JOHNSON,  
Respondents,  
THE PHONE COMPANY OF ARIZONA, LLP,  
and its members,  
Respondents.

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

**STAFF'S REPLY TO QWEST'S  
FURTHER REQUEST FOR  
CLARIFICATION OF  
PROCEDURAL ORDER WITH  
REQUEST FOR EXPEDITED  
RULING**

On May 2, 2003, Qwest filed a request for further clarification of the February 25, 2003 and March 3, 2003 Procedural Orders and a request for expedited ruling. For the following reasons, Staff supports Qwest's requests.

Qwest's Motion for Clarification filed on March 23, 2003 indicated that the Phone Company

1 Management Group's application, notice and apparent transfer of PCMG/Livewirenet customers to  
2 DMJ was in direct conflict with the February 25<sup>th</sup> and March 3<sup>rd</sup> Procedural Orders issued in this  
3 Docket. Qwest's request for clarification and its further request for clarification ask the Commission  
4 to provide direction on what Qwest should do (now, should have done) with PCMG customers that  
5 did not sign a letter of authorization ("LOA") authorizing their transfer to DMJ. It is Staff's  
6 understanding that DMJ produced LOAs from only a small fraction of PCMG's customers. It  
7 nonetheless submitted local service requests ("LSRs") to Qwest seeking to transfer many other  
8 PCMG customers to it for which it did not have LOAs. At the time Qwest filed its original Motion  
9 for Clarification on March 23, 2003, Qwest still had the customers and had not transferred them.  
10 According to Qwest's May 2, 2003 Request, Qwest has now apparently transferred all of these  
11 customers to DMJ.

12 The Commission's February 25, 2003 Procedural Order provided that customers not selecting  
13 an alternative service provider were to go to Qwest by default. The question is whether the  
14 customers without LOAs should have gone to Qwest by default or to DMJ without customer  
15 authorization. Staff reiterates its position expressed at the April 10, 2003 Procedural Conference that  
16 it believes that the customers who did not expressly authorize transfer to DMJ through LOAs should  
17 have gone to Qwest as the default provider.

18 At the Procedural Conference of April 10, 2003, Staff expressed concerns regarding DMJ's  
19 actions in requesting transfer of these customers without LOAs. Staff indicated that it was  
20 investigating whether the Company may have violated the FCC slamming rules in requesting transfer  
21 of these customers without LOAs and prior to expiration of the 90 day period contained in the  
22 Company's Notice. Staff is also investigating whether DMJ changed the long distance provider of  
23 the transferred customers without those customers consent. Staff is investigating other issues  
24 regarding the transfer from PCMG to USURF and DMJ, some of which were discussed at the April  
25 10, 2003 Procedural Conference. Similar slamming investigations are now ongoing before the  
26 Colorado Public Utilities Commission. See Exhibit A. The ALJ's ruling on this issue is important to  
27 several of the issues Staff is investigating regarding DMJ.

28 Staff also supports Qwest's request for an expedited ruling because of the circumstances

1 surrounding the transfer of PCMG's customer base to USURF. The transfer to DMJ stems from an  
2 asset purchase agreement ("the agreement") entered into between PCMG and USURF on March 7,  
3 2003. See Exhibit B. Under the agreement PCMG's customers were actually transferred to USURF.  
4 USURF, which does not possess a CC&N to operate in Arizona, then entered into an agency  
5 agreement with DMJ, which does possess a CC&N to provide local service in Arizona, to provide  
6 service to the customers.

7 It is important that the Commission rule on this matter not only to ensure that the customers of  
8 PCMG are not further harmed, but because under the terms of the agreement PCMG (Mr. Wetherald)  
9 is to receive as consideration for its sale of the customers, \$154.00 in cash, and common stock in  
10 USURF valued at \$46.00 for each customer remaining with USURF ninety days after execution of  
11 the agreement. The agreement was executed on March 7, 2003. Therefore, for each customer  
12 remaining with USURF on June 5, 2003, PCMG will receive \$200.00 in consideration. Staff does  
13 not believe any parties to this transaction, including PCMG, should be allowed to profit if the  
14 Commission determines that transfer of customers without LOAs to DMJ was inappropriate.

15 As noted earlier, Qwest has apparently already transferred these customers to DMJ, based  
16 upon LSRs received from DMJ. Accordingly, if the Commission decides that these customers were  
17 transferred inappropriately to DMJ, provision will have to be made for notice and their return to  
18 Qwest.

19 In summary, Staff recommends that the Commission clarify the Procedural Orders to require  
20 Qwest to serve, as the default provider, PCMG customers for which DMJ does not possess a LOA.

21 RESPECTFULLY SUBMITTED this 8th day of May, 2003.

22 ARIZONA CORPORATION COMMISSION

23  
24 By: 

25 Maureen A. Scott  
26 Gary H. Horton  
27 Attorneys, Legal Division  
1200 West Washington Street  
28 Phoenix, Arizona 85007  
Telephone: (602) 542-6022  
Facsimile: (602) 542-4870

SERVICE LIST FOR 02-0796 (updated 5/7/03)

1 ORIGINAL and 13 copies of the  
2 foregoing hand-delivered for  
3 filing this 7<sup>th</sup> day of May, 2003 to:

4 Docket Control  
5 ARIZONA CORPORATION COMMISSION  
6 1200 West Washington  
7 Phoenix, Arizona 85007

8 COPY of the foregoing mailed/hand-  
9 delivered this 7<sup>th</sup> day of May, 2003, to:

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11 Theresa Dwyer, Esq.  
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13 3003 N. Central Avenue, Suite 2600  
14 Phoenix, AZ 85012

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16 George Tsiolis, Esq.  
17 Snell & Wilmer, LLP  
18 One Arizona Center  
19 400 E. Van Buren  
20 Phoenix, AZ 85004  
21 Attorneys for The Phone Company of  
22 Arizona LLP

23 Mark Brown, Esq.  
24 Qwest Corporation  
25 4041 N. Central, Suite 1100  
26 Phoenix, AZ 85012  
27 Tim Wetherald  
28 3025 S. Park Road, Suite 1000  
29 Aurora, CO 80014

30 Roald Haugan  
31 Managing Partners Chairman  
32 32321 County Highway 25  
33 Redwood Falls, MN 56283

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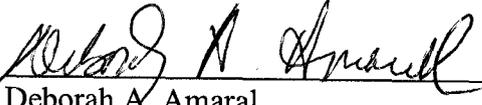
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Thomas H. Campbell, Esq.  
Lewis & Roca  
40 N. Central Avenue  
Phoenix, AZ 85004



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Deborah A. Amaral  
Assistant to Maureen A. Scott

# EXHIBIT A

## STATE OF COLORADO

OFFICE OF CONSUMER COUNSEL  
Department of Regulatory Agencies

1580 Logan St., Suite 740  
Denver, CO 80203  
Phone: (303) 894-2121  
FAX: (303) 894-2117

Kenneth V. Reif  
Director



Bill Owens  
Governor

Richard F. O'Donnell  
Executive Director

### NEWS RELEASE

FOR IMMEDIATE RELEASE

May 1, 2003

Contact:

Ken Reif, Director  
303-894-2121

#### CONSUMER COUNSEL CHARGES DMJ COMMUNICATIONS WITH SLAMMING

Colorado's Office of Consumer Counsel today filed a complaint with the Public Utilities Commission against Texas-based DMJ Communications, Inc., charging the company slammed more than 4,000 Mile High Telecom customers. The OCC states that DMJ transferred these Mile High local phone service customers to DMJ without customer authorization in violation of Colorado law and PUC rules. The office is asking the Commission to pursue monetary penalties against DMJ, or provide compensation for customers slammed by the company.

"Colorado has a tough law and rules against slamming; we are asking the PUC to enforce them against DMJ," said Ken Reif, OCC director. "This is Colorado's first major complaint about local phone service customers being slammed. We want to make sure telephone companies know we have a zero tolerance policy," said Reif.

In March 2003, DMJ transferred or slammed these 4,000 Mile High customers and then sent them a "Welcome to DMJ Communications!" letter with a "Letter of Agency or Authorization" attached. Customers who received this letter had already been slammed to DMJ.

-more-

Recently, the Commission revoked the authority of DMJ Communications, Inc., to offer local service in Colorado for violations of Commission rules. Also, Mile High Telecom received Commission approval to stop offering local telephone service. Mile High customers who had not chosen another provider by April 28 are being transferred to Qwest, the Commission-designated default provider. Similarly, the Commission ordered Qwest to take back DMJ customers who do not choose another provider by May 12. Transferring the remaining DMJ customers will take about four weeks. DMJ and Mile High customers who have an outstanding bill with Qwest must make arrangements to pay that bill before Qwest will take them back. Mile High Telecom will cease offering local phone service in Colorado on May 26, 2003, while DMJ will no longer offer service after June 13, 2003.

Mile High customers who were slammed to DMJ Communications, Inc., can call the OCC at 303-894-2121, or send an email to [OCC@dora.state.co.us](mailto:OCC@dora.state.co.us)

---

*The Office of Consumer Counsel represents residential, small business and agricultural consumers in electric, gas and telephone rate and rulemaking cases before the Public Utilities Commission and federal agencies. The OCC is a division of the Department of Regulatory Agencies.*

# EXHIBIT B

The Law Firm Of



A Professional Corporation

Michael L. Glaser  
mglaser@stklaw.com  
Direct Dial (720) 931-8133  
Fax (303) 572-7883

RECEIVED

MAR 14 2003

LEGAL DIV.  
ARIZ CORPORATION COMMISSION

March 13, 2003

Via Federal Express

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Re: The Phone Company Management Group, LLC  
Docket Nos. T-03889A-02-0796 and T-04125A-02-0796

T-03889A-03-0152

Dear Sir or Madam:

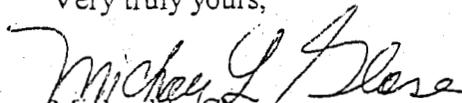
This letter is to advise you that The Phone Company Management Group, LLC, an Arizona limited liability company ("PCMG"), and USURF America, Inc., a Nevada corporation ("UAX"), have entered into an agreement for PCMG to sell all of its assets to UAX in exchange for the consideration described in Exhibit B to the Asset Purchase Agreement ("Agreement"). PCMG's transfer of assets to UAX is subject to the approval of the Arizona Corporation Commission ("ACC"). PCMG filed an application for ACC approval of the transaction on March 11, 2003.

Under the terms of the Agreement, assets UAX will acquire from PCMG will be administered on UAX's behalf pursuant to an agency agreement between DMJ Communications, Inc. ("DMJ"), a licensed CLEC in the state of Arizona, and UAX. This Agreement is described in the application filed by PCMG with the Commission on March 11, 2003.

For the convenience of the ACC, I am enclosing a copy of the Agreement between PCMG and UAX. I am also enclosing 13 copies of this letter for filing in the above-referenced docket.

Should further information be needed from PCMG in connection with this matter, kindly communicate with the undersigned.

Very truly yours,

  
Michael L. Glaser

MLG:clb  
Enclosure

# EXHIBIT B

Docket Control  
Arizona Corporation Commission  
March 13, 2003  
Page 2

cc w/encl: The Honorable Philip J. Dion III  
Maureen Scott, Esq.  
Christopher Kempley, Chief Counsel ✓  
Lyn Farmer, Chief Hearing Officer  
Ernest Johnson, Director  
Mark Brown, Esq.  
Jeff Crockett, Esq.  
Timothy Berg, Esq.  
Tim Wetherald

# EXHIBIT B

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement is entered into by and between The Phone Company Management Group, LLC, an Arizona limited liability company ("Phone Company") and USURF America, Inc., a Nevada corporation ("UAX"), in light of the following facts:

WHEREAS, Phone Company owns certain assets, free and clear of any liens or encumbrances, as more fully described and set forth in Exhibit "A" attached hereto and incorporated herein by this reference (the "Assets"); and

WHEREAS, Phone Company desires to sell all of the Assets to UAX in exchange for the consideration described in this Agreement;

WITNESSETH:

THEREFORE, the agreement of the parties, the promises of each being consideration for the promises of the other:

### I. DEFINITIONS

Whenever used in this Agreement, the following terms shall have the meanings set forth below:

- (a) "Agreement" shall mean this Asset Purchase Agreement and all exhibits hereto or amendments hereof.
- (b) "UAX" shall mean USURF America, Inc., a Nevada corporation
- (c) "Phone Company" shall mean The Phone Company Management Group, LLC, an Arizona limited liability company.
- (d) "Knowledge of Phone Company" or matters "known to Phone Company" shall mean matters actually known to the Members or officers of Phone Company, or which reasonably should be or should have been known by them upon reasonable investigation.
- (e) "Securities Act" shall mean the Securities Act of 1933, as amended, and includes the rules and regulations of the Securities and Exchange Commission promulgated thereunder, as such shall then be in effect.
- (f) "Colorado Act" shall mean the Securities Act of Colorado, and includes the rules and regulations of the Colorado Securities Commission promulgated thereunder, as such shall then be in effect.

Any term used herein to which a special meaning has been ascribed shall be construed in accordance with either (i) the context in which such term is used, or (ii) the definition provided for such term in the place in this Agreement at which such term is first used.

### II. PURCHASE AND SALE

- (a) Subject to all of the terms and conditions set forth herein, Phone Company hereby sells to UAX and UAX hereby buys from Phone Company the Assets, for the consideration set forth in Exhibit "B" attached hereto and incorporated herein by this reference (the "Consideration").
- (b) UAX does not assume, and shall not be responsible for, the payment, performance or discharge of any liabilities or obligations of Phone Company, whether existing at the date of the Exchange or arising thereafter.

# EXHIBIT B

## III. THE EXCHANGE

(a) Phone Company agrees to deliver to UAX a Bill of Sale in favor of UAX, or its assign, reflecting the transfer of the Assets. Upon delivery of such Bill of Sale by Phone Company, UAX shall deliver to Phone Company the Consideration. The deliveries described in the foregoing sentences shall be referred to herein as the "Exchange." The Exchange shall take place in the office of Phone Company on the 7th day of March, 2003.

(b) After the Exchange, the Parties shall execute and deliver such additional documents and take such additional actions as may reasonably be deemed necessary or advisable by any party to consummate the transaction contemplated by this Agreement and to vest more fully in UAX or its assign the ownership of the Assets transferred and conveyed, or intended to be conveyed, pursuant to this Agreement.

## IV. REPRESENTATIONS AND WARRANTIES OF PHONE COMPANY

Phone Company represents and warrants to UAX:

(a) Organization and Corporate Authority. Phone Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Arizona. Phone Company has all requisite corporate power and authority, governmental permits, consents, authorizations, registrations, licenses and memberships necessary to own its property and to carry on its business in the places where such properties are now owned and operated or such business is being conducted.

(b) Status of Assets. At the time of the Exchange (as that term is defined herein), Phone Company will own the Assets (Exhibit "A") free and clear of any encumbrances.

(c) Compliance with Agreements. The execution and performance of this Agreement will not result in any violation of, or be in conflict with, any agreement to which Phone Company is a party.

(d) Authorization. All corporate action on the part of Phone Company and its officers, directors and interest holders necessary for the authorization, execution and delivery of this Agreement, for the performance of Phone Company's obligations hereunder and for the delivery of the Bill of Sale has been taken. This Agreement, when executed and delivered, shall constitute a legal, valid and binding obligation of Phone Company.

(e) Investment Intent of Phone Company. Phone Company represents and warrants that the shares of UAX common stock acquired hereunder by Phone Company will be held by it solely for its own account for investment purposes only and not for the account of any other person and not for distribution, assignment or resale to others.

(f) Review of Public Information. Phone Company hereby represents and warrants that it has received and reviewed (1) UAX's last-filed Annual Report on Form 10-KSB, as filed with the Securities and Exchange Commission ("SEC"), (2) UAX's Quarterly Reports on Form 10-QSB, as filed with the SEC, and (3) UAX's Current Reports on Form 8-K, as amended and as filed with the SEC. With respect to such information, Phone Company further represents and warrants that it has had an opportunity to ask questions of, and to receive answers from, the officers of USURF and UAX.

(g) Restrictive Legend. Phone Company further consents to the placement of the following legend, or a legend similar thereto, on the certificate or certificates representing shares of UAX common stock deliverable hereunder:

"THESE SECURITIES HAVE BEEN ISSUED IN RELIANCE UPON THE EXEMPTION FROM REGISTRATION AFFORDED BY SECTION 4(2) OF THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE TRANSFERRED WITHOUT AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION TO THE EFFECT THAT ANY SUCH PROPOSED TRANSFER IS IN ACCORDANCE WITH ALL APPLICABLE LAWS, RULES AND REGULATIONS."

(h) Accuracy of Information. No representation or warranty by Phone Company in, pursuant to, or in contemplation of this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein, in light of the circumstances under which they were made, not false or misleading. To the knowledge of Phone Company, Phone Company has disclosed to UAX all facts known to it that are material to the Assets transferred and conveyed pursuant to this Agreement.

#### V. REPRESENTATIONS AND WARRANTIES OF UAX

UAX represents and warrants to Phone Company:

(a) Organization and Corporate Authority. UAX is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada. UAX has all requisite corporate power and authority, governmental permits, consents, authorizations, registrations, licenses and memberships necessary to own its property and to carry on its business in the places where such properties are now owned and operated or such business is being conducted.

(b) Issuance of the Common Stock. The shares of \$.0001 par value common stock of UAX to be issued hereunder, when issued and delivered in accordance with this Agreement, will be duly and validly issued, fully paid and non-assessable, and will be free and clear of any liens or encumbrances and, to the knowledge of UAX, will be issued in compliance with applicable state and federal laws.

(c) Compliance with Agreements. The execution and performance of this Agreement will not result in any violation or be in conflict with any agreement to which UAX is a party.

(d) Authorization. All corporate action on the part of UAX and its officers, directors and shareholders necessary for the authorization, execution and delivery of this Agreement, for the performance of UAX's obligations hereunder and for the issuance and delivery of the \$.0001 par value common stock of UAX has been taken. This Agreement, when executed and delivered, shall constitute a legal, valid and binding obligation of UAX.

(e) Legality of Share Issuance. UAX warrants that the common stock to be issued to Phone Company hereunder will be legally issued without registration under the Securities Act or the Colorado Act pursuant to applicable exemptions from registration thereunder.

(f) Assignment of Assets. UAX represents and warrants that the Assets will, immediately upon consummation of the transactions contemplated herein, assign all of the Assets to a competitive local exchange carrier ("CLEC") duly licensed as such in the State of Arizona. Specifically, UAX represents and warrants that the Assets will be administered on its behalf, pursuant to a existing agency agreement, by DMJ Communications, Inc., a licensed CLEC in the State of Arizona.

#### VI. INDEMNIFICATION

Phone Company shall indemnify, defend and hold UAX, and each of its officers, directors, affiliates, employees, agents and shareholders, harmless from and against any and all losses, liabilities, damages, costs and expenses resulting from or arising out of or in connection with:

(a) any misrepresentation or breach by Phone Company of any warranty or covenant contained in this Agreement or any other document executed, delivered or furnished by Phone Company in connection herewith;

(b) income, franchise, sales, use or other taxes, including any penalties or interest with respect thereto, of or relating to the Assets prior to the date of the Exchange; and

(c) liabilities and obligations related to the Assets and arising before the date of the Exchange.

**EXHIBIT B****VII. MISCELLANEOUS**

(a) Notices. All notices hereunder shall be in writing and addressed to the party at the address herein set forth, or at such other address as to which notice pursuant to this section may be given, and shall be given by personal delivery, by certified mail (return receipt requested), Express Mail or by national or international overnight courier. Notices will be deemed given upon the earlier of actual receipt or three (3) business days after being mailed or delivered to such courier service. Notices shall be addressed as follows:

to Phone Company at:

The Phone Company Management Group, LLC  
3025 S Parker Rd.  
Suite 1000  
Aurora, Colorado 80014

to UAX at:

USURF America, Inc.  
Attention: Douglas O. McKinnon  
6005 Delmonico, Suite 140  
Colorado Springs, Colorado 80919

with a copy to:

Newlan & Newlan, Attorneys at Law  
819 Office Park Circle  
Lewisville, Texas 75057

(b) Survival of Covenants. All covenants agreements, representations and warranties of the parties made in this Agreement and in the financial statements or other written information delivered or furnished in connection therewith and herewith shall survive the Exchange hereunder, and shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.

(c) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(d) Arbitration. The parties agree that any dispute arising between or among them related to this Agreement or the performance hereof shall be submitted for resolution to the American Arbitration Association for arbitration in the Denver, Colorado, office of the Association under the then-current rules of commercial arbitration. The Arbitrator or Arbitrators shall have the authority to award to the prevailing party its reasonable costs and attorneys fees. Any award of the Arbitrators may be entered as a judgment in any court competent jurisdiction.

(e) Governing Law. This Agreement shall be deemed to be a contract made under, governed by and construed in accordance with the substantive laws of the State of Colorado.

(f) Counterparts. This Agreement may be executed simultaneously in counterparts, each of which when so executed and delivered shall be taken to be an original; but such counterparts shall together constitute but one and the same document.

(g) Successors and Assigns. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors or assigns of the parties hereto.

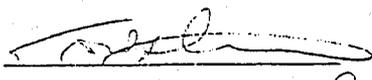
# EXHIBIT B

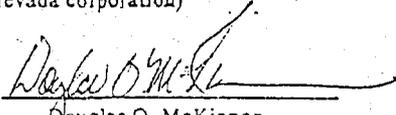
(h) Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date written below.

THE PHONE COMPANY MANAGEMENT GROUP, LLC  
(an Arizona limited liability company)

USURF AMERICA, INC. --  
(a Nevada corporation)

By: 

By: 

Name: Tim Walthers

Douglas O. McKinnon  
President and CEO

Title: Manager

DATE: MARCH 7, 2003

DATE: MARCH 7, 2003

# EXHIBIT B

EXHIBIT "A"

LIST OF ASSETS

# EXHIBIT B

05/10/05 10:43am P. 008

## Assets of Phone Company

The Assets to be acquired by UAX from Phone Company are:

1. The customers listed in Annex A-I to this Exhibit "A".
2. The accounts and account balances related to the customers listed in Annex A-I to this Exhibit "A".

# EXHIBIT B

## EXHIBIT "B"

### DESCRIPTION OF CONSIDERATION

Consideration to be Paid to Phone Company

In consideration of the Assets, UAX agrees to pay the consideration described in Annex B-1 to this Exhibit "B".

With respect to all of the shares of common stock of UAX that may be issued to Phone Company, UAX agrees that all such shares shall be included in the registration statement next filed by UAX under the Securities Act of 1933, as amended, except that such shares shall not be entitled to be included in a registration statement that relates to shares of UAX to be sold to Fusion Capital Fund II, LLC. UAX agrees that it shall bear the costs associated with the registration of Phone Company's shares, but UAX shall not be responsible for the payment of any transfer fees and broker fees or commissions incurred by Phone Company.

Phone Company specifically agrees that it shall not, in any calendar month, sell a number of shares of UAX common stock that exceeds one-twelfth (1/12) of the total number of shares issued to it by UAX.

# EXHIBIT B

ANNEX B-1

UAX will pay Phone Company \$200.00 per acquired customer that remains as a paying customer of UAX on the date that is 90 days after the execution of the Asset Purchase Agreement (the "Agreement"), to which this Annex B-1 relates, as follows:

1. Cash in the amount of \$154.00, payable in 24 monthly installments of \$7.00 (the "Royalty") commencing on a date 90 days from the date hereof; and
2. A number of shares of UAX common stock that has a value of \$46.00, based on the closing price of UAX common stock, as reported by the American Stock Exchange, on the trading day that immediately precedes the 90th day following the execution of the Agreement. By way of example only, should the closing price of UAX common stock be \$.10 per share, then UAX would issue to Phone Company a total of 460 shares per customer [ $\$46.00 \div \$.10 = 460$ ].

It is agreed by UAX and Phone Company that UAX's duty to pay the Royalty with respect to any customer shall continue only for so long as any such customer shall remain a paying customer of UAX, up to a maximum of 24 months, and shall be payable out of collected cash only. Phone Company agrees that, on the date that is 90 days after the execution of the Agreement, USURF shall be entitled to prepay, in whole or in part, the future Royalty with respect any or all of the acquired customers by the issuance of shares of its common stock (on a per share value as set forth in paragraph 2 above), in its sole discretion.

It is further agreed by UAX and Phone Company that the consideration paid per customer shall be subject to adjustment to reflect the results of an independent fair market valuation of the acquired customers. Notwithstanding the foregoing, the parties agree that the per customer valuation will be no less than \$200 per customer. The adjustment in the valuation of the acquired customers, if any, shall be implemented on the date that is 90 days after the execution of the Agreement.

During the period of transition of the acquired customers' accounts, Phone Company agrees that it shall continue to provide Internet and long-distance service to such acquired customers at the expense of UAX. UAX agrees that it shall promptly and completely compensate Phone Company for providing such services to the acquired customers.

The accounts receivable associated with the acquired customers are considered to be an integral part of the customer base and of the fair market value of the customer base. UAX and Phone Company agree that UAX will pay to Phone Company 30% of cash receipts as received for a period of 90 days from the date hereof.