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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

MAY 21 2003

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY

In the matter of:

NON-STOP SHOPPING.COM, INC.
d/b/a 2C2K.COM, INC.
4757 East Greenway Road
Phoenix, Arizona 85032

DONALD L. LEVINE
2 West Waltann Lane
Phoenix, Arizona 85023

KENNETH MARK DEUBNER
7911 East Princess Drive, #1249
Scottsdale, Arizona 85255

STEPHEN ROSENBAUM
6801 East Evans Drive
Scottsdale, Arizona 85254

BOBBIE JO SWARTZ
6801 East Evans Drive
Scottsdale, Arizona 85254,

Respondents.

DOCKET NO. S-03427A-02-0000

**MOTION TO ALLOW TELEPHONIC
TESTIMONY**

The Securities Division ("Division") of the Arizona Corporation Commission hereby
moves for leave to present the telephonic testimony of Division witness K. Mark Deubner during

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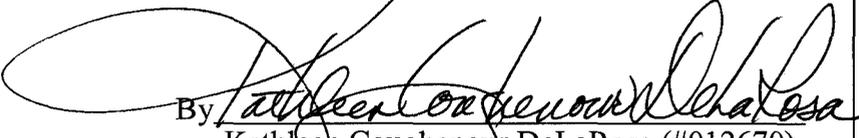
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1 the hearing of the above-referenced matter, scheduled to begin on June 11, 2002. This Motion is
2 supported by the attached Memorandum of Points and Authorities.

3 RESPECTFULLY SUBMITTED this 21 day of May, 2003.

4 ARIZONA CORPORATION COMMISSION
5 SECURITIES DIVISION

6
7 By 
8 Kathleen Coughenour DeLaRosa (#012670)
9 1300 West Washington, Third Floor
10 Phoenix, Arizona 85007
11 Attorney for Arizona Corporation Commission

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. FACTS**

14 The Division anticipates calling K. Mark Deubner as a witness in this hearing. Mr.
15 Deubner was a Respondent in this matter, and previously consented to entry of an Order to Cease
16 and Desist and for other relief in this matter. He is expected to testify regarding the involvement
17 of Respondents Steven Rosenbaum and Bobbie Jo Swartz in the operations of 2c2k.com and in
18 the offer and sale of unregistered securities. His testimony will be germane to the issues
19 presented by the Notice of Opportunity in this case. Mr. Deubner is a Texas resident, and will
20 not be in Arizona at the time of the scheduled hearing in this matter. He is, however, available to
21 testify by telephone on the morning of June 12, 2003, at 9:00 a.m.

22 **II. ARGUMENT.**

23 The purpose of administrative proceedings before the Arizona Corporation Commission
24 is to provide for the fair, speedy and cost effective resolution of matters justiciable by the
25 Commission. *See* Ariz. Admin. Code R14-3-101. To effectuate that purpose, the legislature has
26 provided for streamlined proceedings and relaxed application of the formal rules of evidence.
Specifically, A.R.S. § 41-1062(A)(1) provides for informality in the conduct of contested
administrative cases. The evidence submitted in an administrative hearing need not rise to the

1 level of formality required in a judicial proceeding, as long as it is "substantial, reliable and
2 probative." A.R.S. § 41-1062(A)(1). The Commission has also promulgated rules of practice
3 and procedure to ensure just and speedy determination of all matters presented to it for
4 consideration. *See, e.g.*, A.A.C. R14-3-101(B); R14-3-109(K). Allowing Mr. Deubner to testify
5 by telephone retains all indicia of reliability and preserves Respondents' right to cross-
6 examination.

7 Courts in other states have acknowledged that telephonic testimony in administrative and
8 civil proceedings is permissible and consistent with the requirements of procedural due process.
9 *See Babcock v. Employment Division*, 72 Or. App. 486, 696 P.2d 19 (1985) (court approved
10 Oregon Employment Division's procedure to conduct entire hearing telephonically); *W.J.C. v.*
11 *County of Vilas*, 124 Wis. 2d 238, 369 N.W. 2d 162 (1985) (court permitted telephonic expert
12 testimony in commitment hearing). Both these courts concluded that fundamental fairness
13 weighed in favor of permitting telephonic testimony. The Commission itself has previously
14 allowed telephonic testimony in administrative hearings. *See e.g., In re Easy Money Auto*
15 *Leasing, Inc., et al.*, Docket No. S-03415A-01-0000; *In re The Chamber Group, Inc., et al.*,
16 Docket No. S-03438A-00-0000.

17 Public policy considerations also militate towards allowing Mr. Deubner to testify by
18 telephone. Through this form of testimony, the Division can better allocate its limited resources
19 to better serve and protect the Arizona investing public.

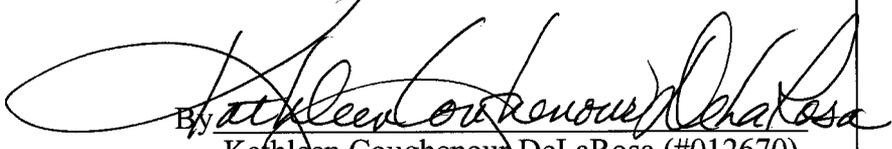
20 **III. CONCLUSION.**

21 Permitting Mr. Deubner to testify telephonically at the hearing allows the Division to
22 present relevant witness evidence that is expected to be reliable and probative, is fundamentally
23 fair, and does not compromise the due process rights of Respondents Rosenbaum and Swartz. The
24 Division therefore respectfully requests that its motion for leave to present the telephonic
25 testimony of Mr. Deubner be granted.

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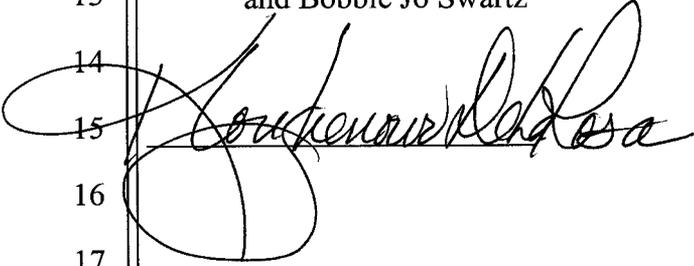
1 RESPECTFULLY SUBMITTED this 21 day of May, 2003.

2 ARIZONA CORPORATION COMMISSION
3 SECURITIES DIVISION

4 
5 By Kathleen Coughenour DeLaRosa
6 Kathleen Coughenour DeLaRosa (#012670)
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9 Attorney for Arizona Corporation Commission

8 COPY of the foregoing
9 mailed/delivered this 21
10 day of May, 2003, to:

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15 Attorney for Respondents Steven Rosenbaum
16 and Bobbie Jo Swartz

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