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NEW APPLICATION

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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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AZ CORP COMMISSION  
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Commissioner

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6 In the matter of:

) DOCKET NO. S-03506A-02-0000

7 JOHN R. WALLRICH and JANE DOE  
8 WALLRICH, husband and wife,  
9 10742 SW Heron Place  
10 Beaverton, OR 97007,

) NOTICE OF OPPORTUNITY FOR HEARING  
) REGARDING PROPOSED ORDER TO  
) CEASE AND DESIST, FOR RESTITUTION,  
) FOR ADMINISTRATIVE PENALTIES, AND  
) FOR OTHER AFFIRMATIVE ACTION

11 Respondents. )

12 **NOTICE: RESPONDENTS HAVE 10 DAYS TO REQUEST A HEARING (See VIII)**

13 **NOTICE: RESPONDENTS HAVE 30 DAYS TO FILE AN ANSWER (See IX)**

14 The Securities Division ("Division") of the Arizona Corporation Commission ("Commission")  
15 alleges that respondent has engaged in acts, practices and transactions that constitute violations of the  
16 Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

17 **I.**

18 **JURISDICTION**

19 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona  
20 Constitution and the Securities Act.

21 **II.**

22 **RESPONDENT**

23 2. Respondent JOHN R. WALLRICH ("WALLRICH") at all times material hereto was a  
24 resident of Arizona. At all times material hereto, WALLRICH was licensed to sell insurance in the  
25 state of Arizona, but was not registered as a securities salesperson or an investment advisor  
26 representative in Arizona.



1 pay telephone. Investors would enter into two agreements, a purchase agreement, and a service  
2 agreement with Alpha to manage the phone. The two agreements were presented and promoted  
3 simultaneously. The telephones were presented to potential investors with four options in the way  
4 of service contracts, each varying in the amount of service provided. The four options varied from  
5 Level 1, which included a minimum of service, to Level 4, which provided full service to the  
6 purchaser, including choosing a site and installing the telephone, collecting all revenue from the  
7 telephone's operation, repairing the telephone when necessary, and even repurchasing or buying  
8 back the telephone at the investor's option. Under Level 4, Alpha would split the net proceeds  
9 with the investor on a 70/30 basis, with Alpha retaining 70% and the investor receiving 30%. The  
10 price of the pay telephones was the same regardless of the service option chosen, \$5,000.00 per  
11 telephone. Although investors were given a choice of using a company other than Alpha to  
12 manage the phone, no known Arizona investor picked a company other than Alpha to manage their  
13 phones. A "typical return" on each pay telephone was touted as 14% per year. In practice, all  
14 purchasers received \$58.34 per month per pay telephone purchased, which amounted to exactly  
15 14% per annum.

16 10. ATC's primary role was marketing the contracts. Alpha's main focus was on obtaining  
17 phone sites and installing, servicing, and managing the phones.

18 11. ATC was presented to the public as the sales organization for Alpha. In early 1999,  
19 ATC engaged Strategic Partnership Alliance, L.L.C., a Nevada limited liability company, and/or  
20 SPA Marketing, L.L.C., a Nevada limited liability corporation, (collectively "SPA") as its  
21 independent marketing and sales firm(s). SPA thereafter was responsible for hiring, training, and  
22 supervising sales agents who were selling the telephone contracts. After SPA came on board, ATC  
23 remained as the processing center for the contracts, while Alpha continued to perform the service  
24 and maintenance of the phones.

25 12. WALLRICH, directly or indirectly, entered into agreements with Alpha, ATC, and/or  
26 SPA, pursuant to which WALLRICH sold investment contracts involving Alpha pay telephones

1 (the "Alpha investment contracts") within or from the state of Arizona. All Alpha investment  
2 contracts WALLRICH sold were Level 4 contracts.

3 13. WALLRICH told prospective investors their investments were insured. The insurer  
4 named varied. Mentioned most often was the Northern and Western Insurance Company of Grand  
5 Turk, Turks and Caicos Islands, British West Indies ("N&W"). Also mentioned were Lloyd's of  
6 London and four other insurance companies listed as re-insurers. N&W was a captive insurance  
7 company wholly owned by Paul S. Rubera, the President and control person of Alpha, and Robert  
8 S. Harrison of Richmond, Texas. N&W is not authorized to write insurance in Arizona. On  
9 information and belief, N&W was not authorized to write insurance in any state in which the Alpha  
10 pay telephones were located. In a letter dated August 15, 2001, Harrison stated: "There is not  
11 now, nor was there ever any insurance coverage for Alpha Telcom, Inc."

12 14. WALLRICH presented Alpha to prospective customers as a stable, profitable, and  
13 innovative company that had been in business since 1985. Alpha was said to be selling and  
14 providing a "turn-key" operation.

15 15. On information and belief, all sales agents, including WALLRICH, were paid  
16 commissions ranging from 12% to 19% per telephone sold.

17 16. WALLRICH participated in recruiting other licensed insurance salespersons to sell  
18 Alpha investment contracts. During this activity, WALLRICH represented that the Alpha  
19 investment contracts were not securities, and that salespersons did not need to be registered to sell  
20 securities before selling the Alpha investment contracts. On information and belief, WALLRICH  
21 received commissions or other compensation as a result of referral of such salespersons to Alpha  
22 and/or ATC and/or SPA.

23 17. WALLRICH sold Alpha investment contracts involving at least 138 telephones to at least  
24 28 individuals or entities within or from the state of Arizona from May, 2000 through May, 2001, for  
25 a total sales amount of at least \$685,250.00.

26 18. Alpha has a long regulatory history in which state securities regulators have found that

1 these purchases of pay telephones and accompanying service contracts were unregistered securities in  
2 the form of investment contracts that were sold by unregistered persons and/or entities, and ordered  
3 Alpha and those working with it to cease and desist. Most Arizona investors to whom WALLRICH  
4 sold the Alpha investment contracts were not aware of these orders. The orders that WALLRICH  
5 could have revealed include:

- 6 a. February 2, 1999, Cease and Desist Order issued by Pennsylvania Securities  
7 Commission, *In the Matter of Alpha Telcom, Inc., et al.*, No. 9812-06.
- 8 b. November 17, 1999, Cease and Desist Order issued by North Carolina  
9 Secretary of State, *In the Matter of the North Carolina Securities Division v. ATC, Inc., Paul Rubera, et al.*, No. 99-038-CC.
- 10 c. June 30, 1999, Temporary Order of Prohibition issued by Illinois Secretary  
11 of State, *In the Matter of Alpha Telcom, Inc.*, No. 9900201.
- 12 d. January 14, 2000, Consent Order of Prohibition issued by Illinois Secretary  
13 of State, *In the Matter of Alpha Telcom, Inc.*, No. 9900201, in which Alpha  
14 agreed to offer rescission to all Illinois purchasers.
- 15 e. November 24, 1999, Cease and Desist Order issued by Wisconsin  
16 Department of Financial Institutions, *In the Matter of Alpha Telcom, Inc. and Paul S. Rubera, et al.*, No. S-99225(EX).
- 17 f. March 7, 2000, Temporary Cease and Desist Ordered issued by Rhode  
18 Island Department of Business Regulation, *In the Matter of Alpha Telcom, Inc. and ATC, Inc.*
- 19 g. July 18, 2000, Florida Department of Banking and Finance filed  
20 administrative action against Alpha and others, seeking a Cease and Desist  
21 Order.
- 22 h. October 24, 2000, Desist and Refrain Order issued by California Department  
23 of Corporations.

24 19. Actions against Alpha after WALLRICH ceased his sales of the Alpha investment  
25 contracts include:

- 26 a. July 26, 2001, Cease and Desist Order issued by Ohio Commissioner of  
Securities;
- b. August 27, 2001, Temporary Restraining Order issued by United States  
District Court, District of Oregon, *SEC v. Alpha Telcom, Inc., et al.*, No.  
CV 01-1283 PA

- 1 c. September 5, 2001, Cease and Desist Order issued by Arkansas Securities  
Department, *In the Matter of Alpha Telcom, Inc., et al.*, No. 01-36-S.
- 2 d. September 6, 2001, Preliminary Injunction issued by United States District  
3 Court, District of Oregon, *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283  
PA.
- 4 e. February 7, 2002, Final Judgment of Permanent Injunction issued by United  
5 States District Court, District of Oregon, *SEC v. Alpha Telcom, Inc., et al.*, No.  
CV 01-1283 PA.
- 6 f. March 13, 2002, Final Order to Cease and Desist issued by Washington  
7 Department of Financial Institutions, *In the Matter of Alpha Telcom, Inc., et  
al.*, No. SDO-21-02.

8 The SEC's Complaint in the United States District Court, District of Oregon, alleged that Alpha  
9 and its affiliates engaged in a Ponzi-like scheme that never generated enough income to pay  
10 expenses, and that the money paid to existing investors always came from sales to new investors.  
11 Several days before the Temporary Restraining Order was issued on August 27, 2001, Alpha  
12 sought bankruptcy protection in Florida pursuant to chapter 11 of the Bankruptcy Code. A court-  
13 appointed receiver subsequently took over the remaining operations of Alpha. Alpha consented  
14 on October 19, 2001 to entry of the Final Judgment of Permanent Injunction against it, but did  
15 not admit the allegations of the Complaint.

16 20. On February 7, 2002, the United States District Court for the District of Oregon  
17 issued its final opinion in connection with the trial of Paul Rubera. That opinion is reported at  
18 *SEC v. Alpha Telcom*, 187 F. Supp. 2d 1250 (D. Or. 2002). In its opinion, the court confirmed  
19 that the Alpha investment contracts are securities and thus subject to regulation as securities. The  
20 court also confirmed that Alpha operated what was essentially a Ponzi scheme in connection with  
21 the sale of the Alpha investment contracts.

22 21. Monthly payments to investors ceased prior to August, 2001.

#### 23 IV.

#### 24 VIOLATION OF A.R.S. § 44-1841

#### 25 (Offer or Sale of Unregistered Securities)

26 22. From on or about May 1, 1999, WALLRICH offered or sold securities in the form of

1 investment contracts, within or from Arizona.

2 23. The securities referred to above were not registered pursuant to Articles 6 or 7 of the  
3 Securities Act.

4 24. This conduct violates A.R.S. § 44-1841.

5 **V.**

6 **VIOLATION OF A.R.S. § 44-1842**

7 **(Transactions by Unregistered Dealers or Salesmen)**

8 25. WALLRICH offered or sold securities within or from Arizona while not registered as a  
9 dealer or salesman pursuant to Article 9 of the Securities Act.

10 26. This conduct violates A.R.S. § 44-1842.

11 **VI.**

12 **VIOLATION OF A.R.S. § 44-1991**

13 **(Fraud in Connection with the Offer or Sale of Securities)**

14 27. In connection with the offer or sale of securities within or from Arizona, WALLRICH  
15 directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue  
16 statements of material fact or omitted to state material facts which were necessary in order to make  
17 the statements made not misleading in light of the circumstances under which they were made; or  
18 (iii) engaged in transactions, practices or courses of business which operated or would operate as a  
19 fraud or deceit upon offerees and investors. WALLRICH'S conduct includes, but is not limited to,  
20 the following:

- 21 a) WALLRICH failed to advise purchasers of the state regulatory actions against Alpha  
22 and of the potential consequences of those orders with respect to their investment;
- 23 b) WALLRICH represented to purchasers that their investment and/or the pay  
24 telephones they purchased were fully insured, when they were not, in fact, insured by  
25 any insurance company authorized to provide insurance in Arizona or in any state in  
26 which the pay telephones were located;

1 c) WALLRICH represented to purchasers that monies they would receive as a result of  
2 their investment were derived from profits on the pay telephones purchased, when in  
3 fact the returns paid to investors came from purchases by subsequent investors;

4 d) WALLRICH represented to sales agents recruited to sell the Alpha investment  
5 contracts that the Alpha investment contracts were not securities, and that the sales  
6 agents did not need to be registered to sell securities in order to sell the Alpha  
7 investment contracts.

8 28. This conduct violates A.R.S. § 44-1991.

9 **VII.**

10 **REQUESTED RELIEF**

11 The Division requests that the Commission grant the following relief against

12 RESPONDENTS:

13 1. Order RESPONDENTS to permanently cease and desist from violating the  
14 Securities Act, pursuant to A.R.S. § 44-2032;

15 2. Order RESPONDENTS, jointly and severally, including the marital community of  
16 WALLRICH and JANE DOE WALLRICH, to take affirmative action to correct the conditions  
17 resulting from his acts, practices or transactions, including a requirement to make restitution  
18 pursuant to A.R.S. § 44-2032;

19 3. Order RESPONDENTS, jointly and severally, including the marital community of  
20 WALLRICH and JANE DOE WALLRICH, to pay the state of Arizona administrative penalties of  
21 up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-  
22 2036; and

23 4. Order any other relief that the Commission deems appropriate.

24 **VIII.**

25 **HEARING OPPORTUNITY**

26 RESPONDENTS, including RESPONDENT SPOUSE, may request a hearing pursuant to

1 A.R.S. § 44-1972 and A.A.C. R14-4-306. **If any RESPONDENT requests a hearing, that**  
2 **RESPONDENT must also answer this Notice.** A request for hearing must be in writing and  
3 received by the Commission within 10 business days after service of this Notice of Opportunity for  
4 Hearing. Each RESPONDENT must deliver or mail the request to Docket Control, Arizona  
5 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover  
6 sheet must accompany the request. A cover sheet form and instructions may be obtained from  
7 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
8 [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

9 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin  
10 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the  
11 parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission  
12 may, without a hearing, enter an order against each RESPONDENT granting the relief requested by  
13 the Division in this Notice of Opportunity for Hearing.

14 Persons with a disability may request a reasonable accommodation such as a sign language  
15 interpreter, as well as request this document in an alternative format, by contacting Shelly M.  
16 Hood, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail  
17 [shood@cc.state.az.us](mailto:shood@cc.state.az.us). Requests should be made as early as possible to allow time to arrange the  
18 accommodation.

## 19 IX.

### 20 ANSWER REQUIREMENT

21 Pursuant to A.A.C. R14-4-305, if RESPONDENT or RESPONDENT SPOUSE requests a  
22 hearing, RESPONDENT or RESPONDENT SPOUSE must deliver or mail an Answer to this  
23 Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W.  
24 Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of  
25 service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must  
26 accompany the Answer. A cover sheet form and instructions may be obtained from

1 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
2 www.cc.state.az.us/utility/forms/index.htm.

3 Additionally, RESPONDENT or RESPONDENT SPOUSE must serve the Answer upon  
4 the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing  
5 or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor,  
6 Phoenix, Arizona, 85007, addressed to Kathleen Coughenour DeLaRosa.

7 The Answer shall contain an admission or denial of each allegation in this Notice and the  
8 original signature of RESPONDENT, RESPONDENT SPOUSE, or RESPONDENT's attorney. A  
9 statement of a lack of sufficient knowledge or information shall be considered a denial of an  
10 allegation. An allegation not denied shall be considered admitted.

11 When RESPONDENT or RESPONDENT SPOUSE intends in good faith to deny only a  
12 part or a qualification of an allegation, RESPONDENT or RESPONDENT SPOUSE shall specify  
13 that part or qualification of the allegation and shall admit the remainder. RESPONDENT or  
14 RESPONDENT SPOUSE waives any affirmative defense not raised in the answer.

15 The officer presiding over the hearing may grant relief from the requirement to file an  
16 Answer for good cause shown.

17 DATED this 15<sup>th</sup> day of November, 2002.

18  
19 

20 Mark Sendrow  
21 Director of Securities

22 Wallrich Notice of Opportunity for Hearing (KCD)