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BEFORE THE ARIZONA CORPORATION COMMISSION

2003 DEC 31 A 11: 10

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

AZ CORP COMMISSION
DOCUMENT CONTROL

In the matter of:)
KATHLEEN WHORLEY SOMMER)
[CRD No. 2750036],)
d/b/a Sommer & Associates,)
and JOHN DOE, wife and husband,)
249 W. Waltann Lane)
Phoenix, Arizona 85023)
Respondents.)

DOCKET NO. S-03489A-03-0000

MOTION TO PERMIT WITNESS TO
TESTIFY BY TELEPHONE

Arizona Corporation Commission

DOCKETED

DEC 31 2003

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The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") moves for permission to present the testimony of witness Andrew Coyle by telephone at the hearing scheduled in this matter. This motion is supported by the record in this matter and by the following Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 31 day of December, 2003.

ARIZONA CORPORATION COMMISSION
SECURITIES DIVISION

By *Kathleen Coughenour DeLaRosa*
Kathleen Coughenour DeLaRosa (#012670)
1300 West Washington, Third Floor
Phoenix, Arizona 85007
Attorney for Arizona Corporation Commission

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 This matter involves the alleged sale of investment contracts by Respondent Kathleen
4 Sommer. Those contracts were issued by Alpha Telcom, Inc. ("Alpha"), and marketed by
5 American Telecommunications, Inc. ("ATC") and/or SPA Marketing ("SPA"), both affiliates of
6 Alpha. Witness Andrew Coyle purchased these investment contracts from Sommer, to whom he
7 was referred by another investor, and is expected to testify about the circumstances surrounding the
8 transaction and about the representations Sommer made to him in connection with the sale. Coyle
9 is a resident of New Jersey, and cannot be in Arizona at the time of the hearing.

10 **II. THE WITNESS SHOULD BE PERMITTED TO TESTIFY BY TELEPHONE.**

11 The purpose of administrative proceedings is to provide for the fair, speedy and cost
12 effective resolution of administratively justiciable matters. To effectuate that purpose, the
13 legislature provided for streamlined proceedings and relaxed application of the formal rules of
14 evidence. Specifically, A.R.S. § 41-1062(A)(1) provides for informality in the conduct of
15 contested administrative cases. The evidence submitted in an administrative hearing need not
16 rise to the level of formality required in a judicial proceeding, as long as it is "substantial, reliable
17 and probative." In addition, the Commission promulgated rules of practice and procedure to
18 ensure just and speedy determination of all matters presented to it for consideration. *See, e.g.,*
19 *A.A.C. R14-3-101(B); R14-3-109(K)*. Allowing Coyle to testify by telephone retains all indicia
20 of reliability and preserves Respondent's right to cross-examination.

21 Courts in other states have acknowledged that telephonic testimony in administrative and
22 civil proceedings is permissible and consistent with the requirements of procedural due process.
23 *See Babcock v. Employment Div.*, 696 P.2d 19 (Or. App. 1985) (court approved Oregon
24 Employment Division's procedure to conduct entire hearing telephonically); *W.J.C. v. County of*
25 *Vilas*, 369 N.W.2d 162 (Wis. 1985) (court permitted telephonic expert testimony in commitment
26 hearing). Both of these courts concluded that fundamental fairness weighed in favor of

1 permitting telephonic testimony.

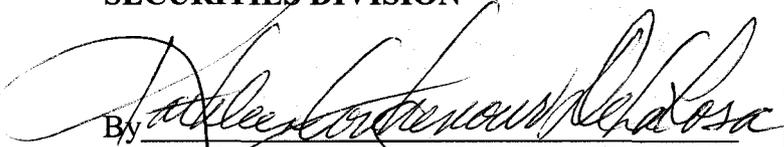
2 Public policy considerations also militate towards allowing Coyle to testify
3 telephonically. Through this form of testimony, the Division can better allocate its limited
4 resources to better serve and protect the Arizona investing public.

5 **III. CONCLUSION.**

6 For all of the foregoing reasons, the Division respectfully requests permission to present the
7 testimony of Andrew Coyle by telephone at the hearing in this matter.

8 RESPECTFULLY SUBMITTED this 31 day of December, 2003.

9 **ARIZONA CORPORATION COMMISSION**
10 **SECURITIES DIVISION**

11 
12 By Kathleen Coughenour DeLaRosa
13 Kathleen Coughenour DeLaRosa (#012670)
14 1300 West Washington, Third Floor
15 Phoenix, Arizona 85007
16 Attorney for Arizona Corporation Commission

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18 copies filed this 31st
19 day of December, 2003, with:

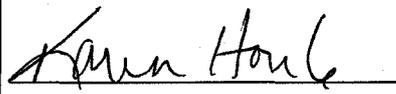
20 Docket Control
21 Arizona Corporation Commission
22 1200 West Washington Street
23 Phoenix, Arizona 85007

24 AND

25 **COPY** of the foregoing
26 mailed/delivered this 31st
day of December, 2003, to:

Hon. Marc Stern, Hearing Officer
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

1 Harry N. Stone, Esq.
2 3030 N. 3rd Street
3 Phoenix, Arizona 85012
4 Attorney for Respondent

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