

ORIGINAL



0000117238

BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

COMMISSIONERS

2004 JAN -6 A 9:3

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

AZ CORP COMMISSION
DOCUMENT CONTROL

In the matter of:)
)
ELLIOT CROSBY)
10253 East Jerome)
Mesa, Arizona 85208,)
)
MARSHA CROSBY)
2898 East Harwell Road)
Gilbert, Arizona 85234-1476,)
)
Respondents.)

DOCKET NO. S-03510A-02-0000

MOTION TO PERMIT WITNESS TO
TESTIFY BY TELEPHONE

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") moves for permission to present the testimony of witness Terence M. Jones 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 6th day of January, 2004.

ARIZONA CORPORATION COMMISSION
SECURITIES DIVISION

Arizona Corporation Commission

DOCKETED

JAN - 6 2004

DOCKETED BY

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 Elliot Crosby.
4 Those contracts were issued by Alpha Telcom, Inc. ("Alpha"), and marketed by American
5 Telecommunications, Inc. ("ATC") and/or SPA Marketing ("SPA"), both affiliates of Alpha.
6 Witness Terence M. Jones purchased these investment contracts from Crosby, and is expected to
7 testify about the circumstances surrounding the transaction and about the representations Crosby
8 made to him in connection with the sale. Jones is a resident of Bullhead City, Arizona, and cannot
9 be in Phoenix 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 Jones 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 these courts concluded that fundamental fairness weighed in favor of permitting

1 telephonic testimony.

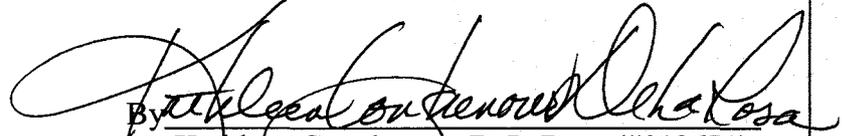
2 Public policy considerations also militate towards allowing Jones to testify telephonically.
3 Through this form of testimony, the Division can better allocate its limited resources to better
4 serve and protect the Arizona investing public.

5 **III. CONCLUSION.**

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

8 RESPECTFULLY SUBMITTED this 6th day of January, 2004.

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

17 **ORIGINAL** and 13
18 copies filed this 6th
19 day of January, 2004, with:

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

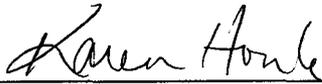
24 **AND**

25 **COPY** of the foregoing
26 mailed/delivered this 6th
day of January, 2004, to:

Hon. Philip Dion III, Hearing Officer
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

1 A. Melvin McDonald, Esq.
2 Jones, Skelton & Hochuli
3 2900 North Central, Suite 800
4 Phoenix, Arizona 85012
5 Attorney for Respondent Elliot Crosby

6 Marsha Crosby
7 2898 East Harwell Road
8 Gilbert, Arizona 85234-1476
9 Respondent *Pro Se*

10 
11 _____

12 2004-01-06 M Permit Telephone Testimony.doc

13
14
15
16
17
18
19
20
21
22
23
24
25
26