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NEW APPLICATION
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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

AZ CORP COMMISSION
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MARC SPITZER, Chairman
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In the matter of:

WESLEY KARBAN WYATT and JANE
DOE WYATT, husband and wife
c/o Harry N. Stone, Esq.
3030 North Third Street, Suite 200
Phoenix, Arizona 85012-3044

Respondents.

DOCKET NO. S-03529A-03-0000

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

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

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

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

I.

JURISDICTION

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

II.

RESPONDENT

2. Respondent WESLEY KARBAN WYATT ("WYATT") at all times material hereto was a resident of Arizona. At all times material hereto, WYATT was licensed to sell insurance in

1 the state of Arizona, but was not registered as a securities salesperson or an investment advisor
2 representative in Arizona.

3 3. At all times material hereto, JANE DOE WYATT was married to WYATT. All acts
4 done by WYATT were done in furtherance of and for the benefit of the marital community of
5 WYATT and JANE DOE WYATT. JANE DOE WYATT therefore is joined in this action,
6 pursuant to A.R.S. § 44-2031(C), to determine the liability of the marital community for the
7 violations alleged herein.

8 4. WYATT may be referred to herein as "RESPONDENT." JANE DOE WYATT
9 may be referred to herein as "RESPONDENT SPOUSE."

10 **III.**

11 **FACTS**

12 5. At all times material hereto, Alpha Telcom, Inc. ("Alpha") was an Oregon
13 corporation located at 2751 Highland Avenue, Grants Pass, Oregon 97526.

14 6. At all times material hereto, American Telecommunications Company, Inc.
15 ("ATC") was a Nevada corporation formed as a wholly owned subsidiary of Alpha on or about
16 September 17, 1998. Originally named ATC, Inc., the name was changed to American
17 Telecommunications Company, Inc., sometime in the first half of 2000. Its address was the same
18 as Alpha's, but was later changed to 620 S.W. 4th Street, Grants Pass, Oregon 97526, then to 2900
19 Vine Street, Suite J, Grants Pass, Oregon 97526, and then to 942 S.W. 6th Street, Suite G, Grants
20 Pass, Oregon 97526.

21 7. At all times material hereto, Paul S. Rubera ("Rubera") was the president and
22 control person of Alpha, and the control person of ATC.

23 8. ATC was organized by Rubera and operated in conjunction with and as an alter ego
24 of Alpha. The two companies were controlled by Rubera and his associates.

25 9. At all times material hereto, Alpha and ATC, and their affiliates, sold pay
26 telephones with telephone service agreements pursuant to which the investor would share in the

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

16 10. ATC's primary role was marketing the contracts. Alpha's main focus was on
17 obtaining 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. WYATT, directly or indirectly, entered into agreements with Alpha, ATC, and/or
26 SPA, pursuant to which WYATT sold investment contracts involving Alpha pay telephones (the

1 “Alpha investment contracts”) within or from the state of Arizona. All Alpha investment contracts
2 WYATT sold were Level 4 contracts.

3 13. WYATT 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. WYATT 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 WYATT, were paid
16 commissions ranging from 12% to 19% per telephone sold.

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

23 17. WYATT sold Alpha investment contracts involving from 182 to 281 telephones to
24 from 38 to 48 purchasers within or from the state of Arizona from May, 2000 through May, 2001, for
25 a total sales amount of between \$910,000 and \$1,475,000.

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 WYATT sold
 4 the Alpha investment contracts were not aware of these orders. The orders that WYATT could have
 5 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.*
 10 *ATC, Inc., Paul Rubera, et al.*, No. 99-038-CC.
- 11 c. June 30, 1999, Temporary Order of Prohibition issued by Illinois Secretary
 12 of State, *In the Matter of Alpha Telcom, Inc.*, No. 9900201.
- 13 d. January 14, 2000, Consent Order of Prohibition issued by Illinois Secretary
 14 of State, *In the Matter of Alpha Telcom, Inc.*, No. 9900201, in which Alpha
 15 agreed to offer rescission to all Illinois purchasers.
- 16 e. November 24, 1999, Cease and Desist Order issued by Wisconsin
 17 Department of Financial Institutions, *In the Matter of Alpha Telcom, Inc.*
 18 *and Paul S. Rubera, et al.*, No. S-99225(EX).
- 19 f. March 7, 2000, Temporary Cease and Desist Ordered issued by Rhode
 20 Island Department of Business Regulation, *In the Matter of Alpha Telcom,*
Inc. and ATC, Inc.
- 21 g. July 18, 2000, Florida Department of Banking and Finance filed
 22 administrative action against Alpha and others, seeking a Cease and Desist
 23 Order.
- 24 h. October 24, 2000, Desist and Refrain Order issued by California Department
 25 of Corporations.

26 19. Actions against Alpha after WYATT ceased his sales of the Alpha investment
 contracts include:

- 23 a. July 26, 2001, Cease and Desist Order issued by Ohio Commissioner of
 24 Securities;
- 25 b. August 27, 2001, Temporary Restraining Order issued by United States
 26 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, WYATT 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. WYATT 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, WYATT
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. WYATT'S conduct includes, but is not limited to, the
20 following:

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

1 c) WYATT 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) WYATT represented to sales agents recruited to sell the Alpha investment contracts
5 that the Alpha investment contracts were not securities, and that the sales agents did
6 not need to be registered to sell securities in order to sell the Alpha investment
7 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 RESPONDENT:

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

15 2. Order RESPONDENT to take affirmative action to correct the conditions resulting
16 from his acts, practices or transactions, including a requirement to make restitution pursuant to
17 A.R.S. § 44-2032;

18 3. Order RESPONDENT to pay the state of Arizona administrative penalties of up to
19 five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
20 and

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

22 **VIII.**

23 **HEARING OPPORTUNITY**

24 RESPONDENT, including RESPONDENT SPOUSE, may request a hearing pursuant to
25 A.R.S. § 44-1972 and A.A.C. R14-4-306. **If any Respondent requests a hearing, that Respondent**
26 **must also answer this Notice.** A request for hearing must be in writing and received by the

1 Commission within 10 business days after service of this Notice of Opportunity for Hearing. Each
2 RESPONDENT must deliver or mail the request to Docket Control, Arizona Corporation
3 Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must
4 accompany the request. A cover sheet form and instructions may be obtained from Docket Control
5 by calling (602) 542-3477 or on the Commission's Internet web site at
6 www.cc.state.az.us/utility/forms/index.htm.

7 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
8 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
9 parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission
10 may, without a hearing, enter an order against each RESPONDENT granting the relief requested by
11 the Division in this Notice of Opportunity for Hearing.

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

17 IX.

18 ANSWER REQUIREMENT

19 Pursuant to A.A.C. R14-4-305, if RESPONDENT or RESPONDENT SPOUSE requests a
20 hearing, RESPONDENT or RESPONDENT SPOUSE must deliver or mail an Answer to this
21 Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W.
22 Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of
23 service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must
24 accompany the Answer. A cover sheet form and instructions may be obtained from
25 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
26 www.cc.state.az.us/utility/forms/index.htm.

