Market Plan
Sales and Distribution

Telemarketing Tiered Sales Approach

- Sales Leads
- Upgrades and value added services
- Customer satisfaction
- Databases

Market Plan
Advertising and Promotion

Advertising

- Promotion campaign directed towards brand or company name awareness.
- Market Strategy is not to directly confront the incumbent Cellular/PCS operators.
- Initial efforts will be to broadly promote TPR's communication capabilities identifying them with SMR versus appearing to be a cellular/PCS company.

Market Plan
Appendix: Further Demographic Information

TELECELLULAR

PETITION FOR RECONSIDERATION

EXHIBIT 3

TeleCellular de Puerto Rico, Inc.
Litigation Calendar

Date	Action	Comments
April 11	Telecellular, Inc. ("TC") V. TeleCellular de Puerto Rico, Inc. ("TPR") et al. The "Petition"	Initial suit filled against TPR by TC - Petition for injunction and other remedies
May 2	Motion we filled a to dismiss April 11 Suit	The Petition is without merit
May 10	Court required TC to show cause by May 28 why petition should not be dismissed	Court strongly inclined to grant dismissal
May 10	TPR files suit for tortious interference against Julio Mantero, Victor de Leon, Ramon Rivera, Ismael Rodrigues, Robert Conrad, Luis Bedoya and Robert Pennock	Suits seek recovery of damages from individuals for their inappropriate participating in suit against TPR
May 22	TC requests extension to answer dismissal	Awarded until June 24
Various in June	TPR moves for Judgment by Default in the individual cases	Time for defendants to appear elapsed in several of the cases
Various in June	Defendants request extension of time to answer complaint individual cases	Extensions granted; entry of default denied
June 19	TC requests addition extension to answer complaint in individual cases	Awarded until July 15
July 2	Notices for Taking of Defendants' Depositions sent in individual cases	Defendants failed to appear, TPR seeks orders to enforce depositions
July 15	TC files opposition to TPR's motion to dismiss in "Petition " case and "AMENDED COMPLAINT"	Court requests TPR's reaction
July 18	TC sends Notice of Deposition to Solla, Nemeth, Crane in Petition case	Crane, Solla and Nemeth to be deposed on August 27, 29 and 30 respectively; since moved to September
July 19	TPR files Motion to Compel Attendance at Depositions in individual cases	

TELECELLULAR

PETITION FOR RECONSIDERATION

EXHIBIT 4

23-Aug	Julio Mantero executes sworn statement withdrawing support for lawsuit.	Case against J. Mantero dropped by TPR
23-Aug	R. Pennock fined $598 for not showing up for deposition in individual lawsuit.	
28-Aug	Island Communications, Inc. completes a corporate resolution to withdraw from lawsuit	New director elected in annual meeting.
29-Aug	Ismael Rodriguez executes sworn statement withdrawing support for lawsuit.	Case against Ismael Rodriguez dropped by TPR
12-Sep	Caribbean Digital Communications, Inc. completes a corporate resolution to withdraw from lawsuit	Only three license corporations remain in lawsuit.
26-Sep	1st hearing for provisional remedies scheduled Baella & Barcelo law firm resign legal representation of TEL-Inc.	Judge refuses resignation of law firm Re-schedules for Oct. 4 Gives maximum of 15 days for answers on pending motions.
2-Oct	Ramon Rivera Mulero is fined $250 for not showing up for deposition in individual lawsuit.	Judge does not accept resignation of Baella & Barcelo from this lawsuit
4-Oct	Baella & Barcelo law firm resign legal representation stating allegations of incompetence from plaintiffs	Judge permits resignation reschedules hearing for October 11 to give plaintiff time to bring new lawyer
11-Oct	Plaintiffs present themselves without lawyer Ed Nemeth testifies and is cross examined	Judge proceeds with hearing Continuation scheduled for October 15
15-Oct	Plaintiffs present themselves without lawyer Dave Barrett and Roger Crane testify and are cross-examined by plaintiff P. Conrad.	Judge requests that plaintiff bring a lawyer for October 25 hearing.
18-Oct	Court issues a default order against Paul Conrad and Caribbean Spectrum in individual lawsuit.	TPR to request date for hearing on damages.
25-Oct	Plaintiff Paul Conrad presents himself without lawyer and proceeds to testify for four minutes.	Paul Conrad is cross-examined. Judge ends hearing stating she will work on provisional remedy order.
7-Nov	Status conference with judge scheduled. Review of motions that are pending, etc.	Meeting re-scheduled for January.
8-Nov	Motions filed requesting granting of earlier motion for dismissal, and for summary judgment against plaintiffs.	Default judgment requested because plaintiffs have not responded as required by judge on September 26.

TeleCellular de Puerto Rico, Inc.
Litigation Calendar

July 31	TPR files answer to the July 15 amended complaint and counterclaims seeking declaratory judgment validating 2nd Joint Venture response to the July 15 amended suit requesting a declaratory judgment	This allows TPR to resume efforts to depose plaintiffs in Petition case also
July 31	TPR requests for provisional remedies (that the Court oblige license corporations to execute transfer of licenses)	Scheduled for hearing on September 26
August 2	Defendants Request Protective Order re: depositions in individual cases	Denied by Court, Rodrigues. Mulero, ordered to appear for deposition on September 12, 1996
August 2	Defendants answer Complaint in individual cases and Counterclaim repeating allegations contained in the Amended Complaint of case TC v. TPR	
August 8	TC request extension to respond to TPR's Counterclaim	Alleged needed time to address "complications" in the response
August 14	TPR responses to TC's July 15 opposition to dismissed by insisting in dismissal of Amended Complaint	Also filed an opposition to TC's request for extension
August 21	Luis Bedoya executes sworn statement withdrawing support for Petition and Amended Complaint, revoking prior statements and stating he was misled by P. Waugh and P. Conrad	Case against Bedoya by TPR dismissed
August 22	TPR sues Paul Conrad and Island Spectrum for $10 million in damages	Tortious interference, libel breach of contract, breach of fiduciary duty

The information age is breeding a new sort of scamster. They put penny stock operators to shame. Meet Marcus Dalton.

The grifters

By Fleming Meeks

Marcus Dalton at the "Wireless Embassy"
Two steps ahead of the law.

OVER DINNER at Sam & Harry's restaurant in Washington, D.C., two masters of the art of separating people from their money were trading war stories. Plump and tanned, a beaming Marcus Dalton told his companion, Pendleton Waugh, how he once obtained a list of Alzheimer's patients.

"He had his salesmen call them and talk to them for a while like they knew them," recalls Waugh of the dinner three years ago. "Then the salesmen would call back a second time and spring them with, 'Where's that $5,000 you said you were going to send me?' Marcus thought that was hilarious," says Waugh.

Waugh is now in a federal prison for conspiracy to launder money, but Marcus Dalton is still at large and still separating the unwise and unwary from their cash. Dalton, 42, a high school dropout and the son of a former Reno croupier, cut his teeth selling tax shelters and vacation timeshares. In 1975 he pleaded guilty to forging stolen airline tickets and was sentenced to 30 days in jail and three years' probation. It wasn't until the early 1980s that his telemarketing skills and lack of scruples became a winning combination. Dalton discovered wireless communications.

Marcus Dalton recalls the discovery clearly. "In 1983 one of my tax shelter contacts brought to my attention a very little known cellular licensing opportunity." The Federal Communications Commission was just beginning to parcel out cellular telephone licenses by lottery. Dalton jumped at the opportunity to peddle applications for the cellular lotteries.

Like most scams, these count on the victim's greed overcoming his common sense. Here's a hypothetical encounter between a potential victim and the scam salesperson:

The phone rings. The salesman asks you whether you know how much money was made by early investors in TV. In cable? In cellular? You missed out, did you? Well, don't miss out on this one. Have you read that the feds are about to give away licenses for wireless cable TV? You have?

New Age scamsters

Wouldn't you like to have a piece of one of those licenses? We'll prepare an application for you—engineering studies, legal work. We'll point you to the best potential markets.

What'll it cost me?

Seven thousand dollars.

What are my chances?

We'll put you together with a group of about 60 people. If we win, your share could easily be worth $100,000. With our contacts and our top-notch engineering studies, you can hardly lose.

In fact, you can hardly win. In many cases the scamsters' engineering studies are so weak that the applications are thrown out. In many other cases the licenses have already been granted, and the application simply vies for a possible waiver—almost certain to be rejected.

There are numerous variations on this theme, but you get the idea. It's penny stock boiler-room operations for the cyberspace age. These are the successors of Robert Brennan and Meyer Blinder.

Marcus Dalton was a true pioneer. Under the assumed name of Marcus Keith, Dalton went to work for American National Cellular. This sleazy outfit was founded by a couple of really shady characters. Earl Scrip, a fast-buck artist who fled the country in 1985 with $1.2 million of the company's cash—after the Federal Trade Commission froze its assets—and Joseph Steingold, who went on to serve three years in correctional facilities for his role in the collapse of American National Cellular was shut down by the FTC in 1985 for misleading investors as to their chances of winning a license.

In the decade that has elapsed, Dalton's fingerprints have been all over many of the biggest of the FCC license scams. We're talking serious money here; investors separated from close to a half-billion a year, in wireless cable TV, specialized mobile radio, interactive TV and personal communications systems. Not even the FCC's recent move to auction off the spectrum seems to have slowed the scamsters down.

As the scam matured, Dalton took another leaf from the book written by Robert Brennan (FORBES, *July 17*). He graduated from peddling the scams for others to creating scams for other people to sell.

Pendleton Waugh, in his pre-Leavenworth days, pitching a wireless deal on video. **Is he singing to the feds to get his sentence reduced? "Say, I can't comment on that. But it sure would be nice to get out of here."**

A self-styled "consultant," Dalton lives and works at what he calls the "Wireless Embassy," an airy contemporary home overlooking the Pacific in Laguna Beach, Calif. "I can sit at my desk and see dolphins and whales and sea otters," he brags. While he enjoys the views, telephone-working salespeople do the dirty work for him now. He has "consulted" for at least a half-dozen companies that have come under attack from the FTC, the Securities & Exchange Commission and state securities regulators.

Dalton is always one or two steps removed from the action. He is never a principal. Think of him as a packager of scams. He will help put together the deals and dreams up the sales pitches. He takes his cut off the top.

And what a cut! Between 1989 and 1992 tens of thousands of investors paid $3,000 to $7,000 each just to apply for a chance at the FCC wireless cable lotteries. The prize was a stake in a license to operate cable television systems that deliver their signal to subscribers by microwave. In just three years the wireless cable application mills took in some $100 million.

An early Dalton "client" was a Sacramento-based outfit called Communication Engineering & Management Services. In 1989 Thomas Evans was a sales manager at CEMS, but Dalton called the shots. "Marcus staffed my sales team with these gunslingers from around the nation," recalls the soft-spoken Evans. "These guys were as good as I've ever seen on the phone. They could talk you out of your mother." Eventually Dalton had a falling-out with CEMS' owner over money and moved on.

Next was North Miami-based Applied Telemedia Engineering & Management, or Ateam, run by Anthony Liggio. One of Liggio's previous companies, First Petroleum Corp. of America, sold applications for the Department of Interior's oil and gas lotteries in the early 1980s and was shut down by the FTC in 1983.

Ateam took in an estimated $12 million from unwary investors, at $6,000 an application. Dalton's cut of the action was $300 per application—about $600,000—paid to him as a referral fee from the engineering firm that prepared the actual applications.

At the same time, Dalton worked with Las Vegas-based American Microtel, which took in $17 million for wireless cable applications before the FTC shut it down in 1992 for deceptive sales practices.

FORBES learned a lot about Dalton's practices from Pendleton Waugh, Dalton's now jailed former compatriot.

Slouching his 6-foot-4 frame into a beat-up chair in the visitors' room at Leavenworth's Federal Prison Camp, Waugh explains that Dalton's trick was to apply for wireless cable licenses that had already been granted. "I asked Marcus how in the world he could find any markets to file in when I couldn't find any," says Waugh, a former securities lawyer and penny stock operator. Dalton explained that he would ask for

Boiler room economics

SELLING phony stocks and near-worthless license applications isn't all fun and games. Listen to this tale of woe from a former Florida bucket shop operator:

"Think about it. Let's say you have a 20-man operation. The phone bill, you're talking at least $1,000 a man. That's $20,000. Then you've got the crank-up costs. The computers, the office equipment, office rental, telephone system. And you've got the brochure cost, that's at least five bucks apiece." Why are brochures so expensive? Because the bucketer must buy them from the promoter, who is not in business for the heck of it. "And you've got the Federal Express cost for sending the brochure out and the Federal Express cost for bringing it back in.

"Then there's the leads. These guys pay $30 apiece for them, and maybe only 1 in 10, 1 in 12 closes. So think about how much advertising is costing. Then you got legal fees, then you got secretarial. And a salesman makes 10%, maybe 15%. What salesman is going to do a deal like this for less than 10%?

"So, there you're sitting on at least 35% of each dollar that comes in. And that's if you've got a real smooth operation."

Our reformed bucketer is just getting wound up. The boiler room manager makes 5% on the deal, as does the recruiter, or consultant, who puts the promoter and the room owner together.

"If the government really sat down and took a look at the numbers, they'd see it's not so lopsided," he says, starting to feel sorry for himself. "If I'm a Merrill Lynch, and I already have my deal set up, and the rent is already being paid and my overhead is covered, then maybe I could get away with charging 8%, 10% commissions. But if you have an organization, that all it does is represent one program, where the hell does anybody think the money comes from?" —F.M.

waivers to operate in areas that overlapped already licensed markets. "'But you can't get a waiver,' I said. 'Yeah,' he says, 'but I'll file for one anyway.'"

Dalton brims with ideas. He seems to have controlled something called Micromedia Development Service, a company he set up with his father, Arthur, as nominal boss. In 1991 and early 1992 the Washington, D.C.-based firm prepared some 5,000 applications for application mills like Ateam and American Microtel. For its services Micromedia Development was paid $1,350 per application, or roughly 22% of the retail price. Marcus Dalton concedes that a large majority of those applications were filed with waiver requests.

Barbara Kreisman, chief of the Video Services Division of the FCC, which oversees wireless cable licensing, says she can't remember a single waiver being granted. "It would be extraordinary," she says, to find a situation where a waiver had been granted.

Unfortunately, most of the victims never thought to ask about waivers.

In April 1992 the FCC ended its lotteries for wireless cable licenses, but the scams continue unabated. Consider this recent pitch from Lorraine Goldfarb, boiler room salesperson for Fort Lauderdale-based Star Tech Communications.

Goldfarb: "Did you by any chance see any of the AT&T ads where the man is at the beach, and out of his beachbag he takes a small notebook-size computer, attaches a [illegible] phone and faxes from the beach to the mainframe computer? That's what this is all about."

In short order Goldfarb lays out the pitch: For $21,000 I can be part of a partnership that will bid in the FCC's next round of auctions for personal communications services licenses.

"Our game theory strategists," Goldfarb adds, "believe we should acquire [illegible] three licenses per [$1.05 million] partnership."

Potential victim: "How much will they be worth?"

Goldfarb: "Five years out, you're looking to amass $225,000 a year for the rest of your life and your children's lives."

And who's doing the game theory work? "Technomics," she says, "which is Marcus Dalton's company."

Page through the partnership agreement, and you'll never complain about a mutual fund load or a real estate agent's 6% again. Half the $10,500 goes to sales commissions and other marketing expenses; engineering studies and other charges chew up another $3,300.

That leaves you and your other partners, who kicked in $1,050,000 to grab a piece of the information superhighway, with just $200,000 for bidding. That is not enough to register with the FCC as a bidder for a "target market" like Charleston, S.C., much less enough to bid on it. You are buying a ticket, but it will never get you past the box office.

The auctions, originally scheduled to begin on Aug. 29, have been postponed indefinitely in the wake of the Supreme Court decision disallowing affirmative action quotas. As an indirect result of the delay, Dalton and the other auction scammers are allowed to continue to ply their trade. Doing a quick back-of-the-envelope calculation, Pendleton Waugh estimates that the PCS auction deals are bringing in $12 million a month.

How seriously is one to take the word of a jailed, convicted felon like Pendleton Waugh? Says Mark Knops, Enforcement Counsel for the Securities Division of the Arizona Corporations Commission: "Penn Waugh knows this business inside and out. You can quote any number from him

New Age scamsters

"Wireless cable could have been another cellular," says Dalton, launching into a conspiracy theory in which the FCC and Hughes Electronics teamed up to scuttle the industry. "But something went wrong along the way to the promised land."

as being as credible as anything a regulator would tell you."

How does Dalton stay so far ahead of the law? Here's what one player tells us: "If the federales come down on a phone room for misrepresenting the project, Marcus is insulated even though he's the one that tells them the hype."

Finally we confront master scamster Marcus Dalton:

Are you clearing 10% on the PCS auction deals? we ask.

Dalton unleashes a long, somewhat forced laugh. "I wish it were true."

Hasn't he netted $15 million to $20 million over the years?

"I couldn't tell you how much the gross was, or the net, but I can tell you that we've not been unhappy with the results."

Have your investors been equally happy? Dalton launches into a long-winded conspiracy theory: The FCC and Hughes Electronics, owner of satellite broadcaster DirecTV, teamed up to scuttle the wireless cable TV industry.

Dalton and his ilk like to boast that their salespeople are subject to rigid compliance rules in their sales tactics. That compliance is generally about as genuine as the shots at winning a license.

"Twenty minutes before the compliance call [to the customers] comes in," explains a sales manager on a couple of particularly slimy deals, "the salesman calls and goes over the questions and schmoozes the customer. On the risk disclosure questions, the really bad ones, like, 'Do you realize you can lose all your money?' usually the salesman will say, 'That's a generic statement written by the government. We already covered that, right?' And you make 'em say that." Nod, nod. Wink, wink.

"It works pretty well," says the former sales manager. "I never had a single person not make it through compliance."

Would that Marcus Dalton were the only crook out there in cyberland. He isn't. Another big player is Joe Steingold, whose record in the sleazy end of the wireless communications business dates back to the first FCC

Necessity:

Must demonstrate that better design doesn't have to cost more.

•

Must provide unique, all-weather play area for children.

•

Must be easy and affordable to maintain.

•

Must use natural light throughout to animate all living areas.

•

Must take advantage of an exceptional site, surrounded by Puget Sound and woodlands.

•

Must be designed for minimal environmental impact.

•

Must increase in value at a rate greater than the market as a whole.

•

Must be absolutely unforgettable in design.

AIA

AMERICAN INSTITUTE OF ARCHITECTS

license application mill. American National Cellular.

"Listen, I'm retired for about eight months already," Steingold barks in a Chicago accent, talking from his office in San Diego, Calif. "I'm 65 years old. I was in the telemarketing business *ten years ago*. Haven't been since."

Come on, Joe. That's not what the California Department of Corporations found in April 1994 when it raided an office in San Diego, looking for evidence on so-called wireless cable build-out promoters. "We didn't know it was Steingold's office at the time, but when we went in, his desk was there," says Kathryn Holguin, an investigator with the California Department of Corporations. According to the department, Steingold's deals took in at least $24 million from investors in deals to build wireless cable systems in Reading, Pa., Shreveport and Baton Rouge, La. They never saw a penny back.

These days, despite his denials, Steingold is said to have turned his attention to deals to build out specialized mobile radio systems. His hucksters tell their victims that their company already has a license and needs money to develop it. Of course, since most of the money raised goes to salespeople and other expenses, little is left for "build-out."

Take Mid-Tennessee 3rd Mobile, which earlier this year closed out funding a $26 million deal (FORBES, *Feb. 13*), and Roamer One, a so-called network of SMR systems.

Roamer One is owned by a publicly traded company called Intek Diversified Corp., brainchild of Britisher Nicholas Wilson. A veteran of cellular's early days, Wilson was barred from the securities industry for a year in the early 1980s. Like Dalton, Wilson has learned to distance himself from the actual promotions.

Hence, Roamer One doesn't dirty its hands in raising money for the 500-odd SMR build-out deals around the country that will supposedly be tied together in the network.

Here's what a boiler room pitchman recently told a potential sucker: "Nick Wilson is the same fella that started Cellular One ten years ago and sold it to Craig McCaw."

That's a baldfaced lie. But it helps to sell the $14,950 partnership units. The alleged McCaw connection has also helped to push Intek's Nasdaq-traded shares from 2¾ to a recent 9⅝ since January. At that price Intek has a market capitalization of $99 million—53 times the company's trailing 12-month revenues.

The rape and pillage goes on. In December of 1994 California's Department of Corporations brought actions against 426 individuals, boiler rooms and promoters who were pitching phony cyberspace deals worth $850 million. But, says California's assistant chief of enforcement, G.W. (Bill) McDonald, who also chairs the board of the National White Collar Crime Center, "The states have brought hundreds of cases involving these high-tech deals, but we're just stomping at the tentacles. We need to go after the head of the octopus."

Which head isn't all that far away, Mr. McDonald. ■

Invention:

TELECELLULAR

PETITION FOR RECONSIDERATION

EXHIBIT 5

Resolution and Order on Provisional Remedies

In the amended lawsuit presented on July 17, 1996, Telecellular, Inc. and eight corporations with licenses in the 800 MHz (from now on referred to as **license corporations**) awarded by the FCC for the area of Puerto Rico, requested that certain contracts between the license corporations and Telecellular de Puerto Rico, Inc. (TPR) be declared null. These contracts deal with the establishment of a telecommunications system in PR. There are fifteen license corporations and eight of them initiated the lawsuit. Of these, together with Telecellular, Inc., Caribbean Spectrum, Inc. Island SMR, Inc. and Island Digital Communications, Inc. remain in the lawsuit (from now on referred to as the "**three license corporations**") (1)

In essence, the allegations of the amended lawsuit are that the license corporations completed a first joint venture contract (from here on referred to as **1st Joint Venture**) in May 1994 with Telecellular, Inc. and that later the license corporations were

(1) The other license corporations have disauthorized that their names be used in this lawsuit through sworn statements and other documents. See Annex 1,2,3 of the motion presented by defendants on September 24, 1996 and motion presented on August 29, 1996 titled "Opposition to 4th Request for Extension".

fooled by the defendants to sign on May 26, 1995 a second joint venture contract (from here on referred to as **2nd Joint Venture**) with TPR. This 2nd Joint Venture between the three license corporations and TPR had as an integral part a Construction and Management Agreement and a Purchase Option Agreement. In the context of these allegations the plaintiff requests damages and that it be determined that the prevailing contract be the 1st Joint Venture between co-plaintiff Telecellular, Inc.,. and the three license corporations and not the 2nd Joint Venture between the three license corporations and TPR. It is appropriate to point out that the three license corporations, as it is noted in the amended lawsuit, are also stockholders of TPR. See paragraph 3 of amended lawsuit.

In their response to the amended lawsuit on July 31, 1996, the defendants denied the allegations of the lawsuit and counter-sued the plaintiffs requesting that it be declared that the contracts that are valid and should prevail and that tie the parties are the ones they jointly subscribed are the 2nd Joint Venture contracts. They request specific fulfillment of these and also damages.

The defendants also presented on July 31, 1996 a sworn Request for Provisional Remedies. The defendants allege that the non-compliance of the three license corporations with the 2nd Joint Venture impede the implementation of the communications system. Reference is made in that the grant from the FCC is until February 27, 1998 to develop the project and that the same is on the verge of being lost and it would be academic if remedies are arrived at by the way of merits in a final decision. The defendants also argue that if the plaintiffs were successful in this lawsuit their claims are of an economic nature consisting of "the difference of the payments

made by TPR and that which they would have been able to get by using the licenses in their authorized area o contracting with another party to develop an alternate wide area system, assuming that it would be possible in the referenced period of nineteen (19) months." Finally the defendants express that it would be difficult for the plaintiffs to use their licenses if it is not under the 2nd Joint Venture contracts, so the remedies sought would result in benefit for the plaintiffs. In this same manner, they request a provisional remedy, without bond, requesting that the three license corporations be ordered to grant the necessary documents to transfer their interests in the SMR licenses to TPR, in exchange of which TPR will issue 25,000 shares to each one.

By order notified on August 9, 1996 we required that the plaintiffs express themselves, in ten (10) days relating to the Request for Provisional Remedies. They did not respond to this order in a written manner, not withstanding that they requested and the court granted an extension until August 30, 1996. Independently we scheduled a hearing for (sic) August 13, 1996. (NOTE: THE REAL DATE WAS SEPTEMBER 26, 1996).

Rafael Baella, Esq. showed up at this hearing representing the plaintiffs, and later resigned their representation. The court gave the plaintiffs time to contract a new lawyer adjusted to the urgent terms requested by the provisional remedies. As of this moment in which we notify this order the plaintiffs have not contracted new legal representation, having already expired the term given to them.

At the hearing on provisional remedies both parties were present; the plaintiffs representing themselves (2) and the defendants with their lawyers. The defendants presented three witnesses as well as abundant document proof. The three license corporations presented documents and the testimony of Paul Conrad. The hearings started on October 11; continued on the 15th of October and finished on October 25, thereby having been submitted the matter to the court for a determination.

In spite of the fact that the plaintiffs did not submit the position in a written manner, from the hearings it is evident that they understand that Rules and Regulations of the FCC does not permit what the defendants pretend through the provisional remedies. This is that the FCC will not approve the transfer of the licenses before the construction of the system. They also claim that Telecellular, Inc. is a bona fide and existing corporation, therefore the 1st Joint Venture is the binding and prevailing contract. See Exhibits I,E,B and C of the plaintiffs.

Rule 56.1 of the Civil Code grants the court"...to dictate any provisional order that may be necessary to assure the effectiveness of the sentence". The same rule requires that the court consider "...the interests of all parties involved" and that it dispose"....according to the requirements of *substantial* law". 32 LPRA AP. III Rule 56.1 In Rivera Rodriguez v. Stowell, 93 JTS 111, determined the need of the promoters of provisional remedies (defendants) to show probability of prevailing based on merits. Rivera Rodriguez, supra, page 10934. The following is an exposure of what, to our judgment, gave the proof for consideration under the standard of probability of prevailing. What we express here should not in any way be understood as a determination of the credibility of the witnesses, or that in any manner are we prejudging the controversy in front of us. We evaluated the proof strictly for ends of the provisional remedies requested.

(2) In spite of knowing of B. Muñoz, Inc. v. Productora Puertorriqueña, 109 DPR 825 (1980) we permitted the plaintiffs to present proof through Mr. Paul Conrad. This was also brought upon by the personal citation of the witness and by Mr. Robert Pennock and Mr. Ramon Rivera Mulero representing the three license corporations that the defendant made and our worry that due process of law be given to all parties, required by Rivera Rodriguez v. Stowell, 93 JTS 111. page 10931

I

Of the proof presented we find that an integral part of the 2nd Joint Venture in which the three license corporations subscribed, objects of this incident, a Construction and Management Agreement and a Purchase Option Agreement. Pertinent to the remedies before us, it is stated in the 2nd Joint Venture that the same will be named "Telecellular"; and that the manager will be TPR and it has been created "for the purpose of providing wide area SMR service to the island of Puerto Rico, including the requisition and construction of all necessary physical assets, and operation (sic) the completed system:. Art. 1, Joint Venture Agreement, May 1995. Exh. 10A, 10B AND 10C. It specifically states that the system will be realized predicated on authorization from the FCC. Also, in Article 7 it expresses that this contract supersedes any other written or verbal agreement between the parties. Ibid, Art.7 Joint Venture May 1995.

The Construction and Management Agreement, on the other hand establishes that the participation of the SMR license corporations in the construction and management of the project will be subject to the control and approval of the license corporations and in conformance with all applicable FCC rules. See Exh. 10A, 10B AND 10C. Article 11.1 of the construction contract disposes that it is the intention of all parties to comply fully with all applicable FCC rules and that it is TPR, as manager, whom is commended the job of recommending to the license corporations the activities or representations that it (TPR) deem necessary.

Also, it is condtioned that if the FCC emits a Final Order that determines that the agreement does not comply with FCC regulations, that the parties will be required to submit themselves to an arbitration process , with the objective of reviewing the agreements so as to make it compliant with FCC requirements.

Through the Purchase Option Agreement the contracting parties, TPR and the three license corporations agreed that they wanted to establish the possible transfer of the licenses to the "Telecellular" Joint Venture conditioned on approval and authority of the FCC and subject also to the terms and conditions of the contract.(3) In the referenced document the three license corporations grants Telecellular the right to acquire the licenses.

As it states in Art. 3 of the referenced contract, the option can be exercised at any moment during the contract period "after all required so long as all FCC approvals have been obtained. See Purchase Option Agreement, Art 3 Exh. 10A, 10B AND 10C. The exercise of said option will be notified to each license corporation. It is expressly conditioned in the contract, that it is the obligation of each license corporation to provide reasonable help so that Telecellular complete the necessary tasks with the government agencies including the FCC to complete the transfer of the licenses. Finally Art. 5 establishes that "The Purchase Option may not be exercised unless the FCC has consented to the transfer of the license associated with the system".

Even though these contractual clauses could point to an apparent inconsistency, for the purpose of the particular matter that we now are resolving,

(3) The text reads: "subject to the approval and authority of the FCC, and subject further terms and conditions set forth herein".
(4) Art. 3 reads: "The purchase option is exercisable at any time during the term of this agreement after all required so long as FCC approvals have been obtained. To exercise the Purchase Option Telecellular must notify Licensee in writing that it will exercise its Purchase Option; such notice will be final. With Licensee's reasonable assistance, Telecellular shall promptly make such applications and filings with all federal and local government authorities, including the FCC, as may be necessary or appropriate to effect the transfer of the System."

it is clear that the FCC must approve any act that TPR and the three license corporations do with their licenses.

By letter dated June 17, 1996 TPR notified the three license that it was exercising the option to transfer the licenses to TPR, subject to FCC approval. The appropriate forms were included. TPR also stated that upon completion of the license transfer, it would issue a certificate for 25,000 shares as payment for the transfer.

Relating to the licenses, in the 1st Joint Venture (May 1994) the license corporations give Telecellular, Inc. a right of first refusal to purchase its license.(5) There is no allegation in the amended lawsuit that Telecellular, Inc. has exercised such right or that it is now interested in exercising the same as part of the provisional remedies requested. It is only the defendant, up to now, the only one interested in the license transfer so it can start the process of establishing the communications system in Puerto Rico.

The testimonial and document proof presented by the defendants reflected that it had done all the tasks relating the FCC for the implementation of the system that we are now dealing with. The defendants requested and obtained the Extended Implementation Grant. They also accomplished the waivers for deadlines on construction of the licenses of the license corporations, while

(5)Art. 5.1 "Joint Venture" May 1994

the request for extension of authorization of system implementation was still pending. In the same manner, they obtained the waiver over the FCC freeze on requests for SMR micro-cells required for the wide area system. Also the lawyers of the defendants presented on January 4, 1995 and the 16th of January and the 15th of February 1996 comments on FCC regulation procedures that would impact the rules relating to SMR. Exh. 6. On February 22 , 1996 the lawyers for TPR made an ex parte presentation to the FCC on the project. In the tasks realized TPR was identified as part of the joint venture, and also as the organizer of the same joint venture that would construct and operate the wide area system.

On February 26, 1995 the FCC granted, to the project denominated as Telecellular the extended implementation for five years. The same was conditioned based on the results of "Further Notice of Proposed Ruling Making PR Docket No. 93-144" Exh. 7. No evidence was provided on what are the results of this procedure. Also, the defendant had requested on May 18, 1995 an amendment to the extended implementation period, this was authorized provisionally for five years conditioned also to "PR Docket No. 93-144". See Exh. 8 & 9

It is a non disputed fact that rights of the license corporations would be up by twelve months after being granted, but in view of the Extended Implementation Grant (EIG) given by the FCC these rights have been extended until February 1998. See Paragraph 20 of Amended Lawsuit and its Exh 4 as also paragraph five of the Request for Provisional Remedies.

The promoting party (defendants) has established, to the satisfaction of this court, the devastating effects of not granting the provisional remedy requested.

In this manner, from the evidence presented it comes forth that the project is paralyzed. Because of the lawsuit, there is no loan for financing the system, , the contracts with GTE for consulting services in training employees in the operation and maintenance of the system, are not being acted upon. Exh. 17 TPR understands that if the court grants the provisional remedy negotiations could be initiated for financing as well as other services for the implementation of the system.

In this same manner, it comes forth from the evidence, that there is a small amount of time to get radio frequency engineers; find and negotiate sites for antennae; obtain approvals from ARPE and other Puerto Rico government agencies; acquire and receive equipment; complete construction; get contractors and bring personnel into the project.

If the provisional; remedies are not granted TPR is at risk of losing the investment it has already made and also its reputation in front of Ericsson (the entity that gave the project its initial financing) and GTE. Exh. 16. TPR's entrance into the market will also be affected. Currently, because of this lawsuit, TPR will be the fifth most important to enter the market when it could have been the third. See Exh. 22. Finally, the defendants referred to the people of Puerto Rico being affected if the remedies are not granted because of loss of the jobs that this project would generate.

II

Art. 1074 of the Civil Code, 31 LPRA Sec. 3049, disposes that "the creditor may, prior to complying with all the conditions, can exercise the actions that will proceed to conserve his rights.. The debtor can repeat that in the same time he would have paid." (Emphasis added)

NOT TRANSLATED OR TEXT INCLUDED BY TRANSLATOR

References to : Eduardo Vazquez Bote, Tratado teorico, practico y critico de Derecho Privado Puertorriqueño, T.V., Derecho de Obligaciones, (Equity, Ed. 1991) page 199

Mercedes Bus Line, Inc. v. Rojas, 70 DPR 540 (1949)

Sec. 310(d) Communications Act 1934, 47 USCA: "No construction permit or station license....."

From the dispositions of the previous quoted laws we understand the worth of the Purchase Option Agreement will be dependent on approval by the FCC of the transfer of the licenses of the three license corporations. It depends on the FCC. As analyzed, the FCC is the agency with exclusive jurisdiction over matters relating SMR licenses. Therefore it is the FCC that has to express its feeling on validity or approval of the transfer.

It does not concern the court at this moment, to determine how the FCC will solve this issue, not withstanding the rules and regulations referenced by the plaintiffs. We have received evidence that the FCC has issued waivers to certain regulations