

1 LEE SHANNON; and TERESA S. VIGNOLA, are General Partners in
2 CELLSWITCH and clients of defendant ROMULUS ENGINEERING, INC.
3 Plaintiff JANET B. CLOWES is a Limited Partner in CELLSWITCH and a
4 client of ROMULUS ENGINEERING, INC. (Hereinafter the General and
5 Limited Partners shall be referred to together as "INDIVIDUAL
6 PLAINTIFFS" and together with CELLSWITCH, as "PLAINTIFFS").

7 4. PLAINTIFFS are informed and believe and thereon allege
8 that Defendant ROMULUS ENGINEERING, INC. ("ROMULUS"), is a
9 corporation organized and existing under the laws of the State of
10 Delaware and licensed to do business in California. The principal
11 place of business is, and at all times herein mentioned was, in the
12 City and County of San Francisco, California.

13 5. PLAINTIFFS are informed and believe and thereon allege
14 that Defendant THE 22ND CENTURY CORPORATION is a corporation
15 organized and existing under the laws of the State of Delaware
16 licensed to do business in California with its principal place of
17 business in the county of San Mateo, California.

18 6. PLAINTIFFS are informed and believe and thereon allege
19 that Defendant ROMULUS CORPORATION is a corporation organized and
20 existing under the laws of the State of Delaware with its principal
21 place of business in the State of Oregon whose business activities
22 in California are substantial, continuous and systematic.

23 7. PLAINTIFFS are informed and believe and thereon allege
24 that Defendant SMG CORPORATION is a corporation organized and
25 existing under the laws of the State of Delaware licensed to do
26 business in California with its principal place of business in the
27 county of San Mateo, California.

28 8. PLAINTIFFS are informed and believe and thereon allege

1 that Defendant GENERAL CELLULAR INTERNATIONAL, INC., dba CELLULAR
2 INTERNATIONAL, INC., is a corporation organized and existing under
3 the laws of the State of Delaware licensed to do business in
4 California with its principal place of business in the county of San
5 Mateo, California.

6 9. PLAINTIFFS are informed and believe and thereon allege
7 that Defendant INDEPENDENT CELLULAR TELEPHONE, INC., is a
8 corporation organized and existing under the laws of the State of
9 Delaware licensed to do business in California with its principal
10 place of business in the county of San Mateo, California.

11 10. PLAINTIFFS are informed and believe and thereon allege
12 that Defendant QUENTIN L. BREEN ("BREEN") is and at all times herein
13 mentioned was, a resident of the State of Oregon, whose business
14 activities in California are substantial, continuous and systematic.

15 11. PLAINTIFFS are informed and believe and thereon allege
16 that Defendant ANTHONY T. EASTON ("EASTON") is, and at all times
17 herein mentioned was, a resident of the County of San Mateo,
18 California.

19 12. PLAINTIFFS are informed and believe and thereon allege
20 that Defendant DANIEL J. PARKS ("PARKS") is, and at all times herein
21 mentioned was, a resident of the County of Sonoma, California.

22 13. Between approximately July, 1987 and February, 1988,
23 INDIVIDUAL PLAINTIFFS each entered into a contract with Defendant
24 ROMULUS entitled "Cellular Application Services Agreement" (together
25 "the Contracts"). A true and correct copy of one of the Contracts
26 is attached as Exhibit "A" and incorporated herein by reference.

27 14. PLAINTIFFS are informed and believe and thereon allege
28 that Defendant BREEN is the President of Defendant ROMULUS.

1 15. PLAINTIFFS are informed and believe and thereon allege
2 that Defendant EASTON is the Chairman and Chief Executive Officer of
3 Defendant ROMULUS.

4 16. PLAINTIFFS are informed and believe and thereon allege
5 that Defendant PARKS is and officer and director of Defendant
6 ROMULUS.

7 17. PLAINTIFFS are informed and believe and thereon allege
8 that there exists, and at all times herein mentioned there existed,
9 a unity of interest and ownership between Defendants BREEN, EASTON,
10 and PARKS, and Defendant ROMULUS, such that any individuality and
11 separateness between Defendants BREEN, EASTON, and PARKS, and
12 Defendant ROMULUS have ceased, and Defendant ROMULUS is the alter
13 ego of Defendants BREEN, EASTON, and PARKS in that Defendants BREEN,
14 EASTON and PARKS completely controlled, dominated, managed and
15 operated Defendant ROMULUS and intermingled its assets with their
16 own to suit the convenience of Defendants BREEN, EASTON, and PARKS
17 in order to avoid payment of the obligations owed to creditors of
18 Defendant ROMULUS.

19 18. Adherence to the fiction of the separate existence of
20 Defendant ROMULUS from Defendants BREEN, EASTON, and PARKS would
21 permit an abuse of the corporate privilege and would promote
22 injustice in that it would allow Defendants BREEN, EASTON, PARKS and
23 ROMULUS to profit from their relationships with PLAINTIFFS while
24 allowing them to avoid payments of obligations owed to PLAINTIFFS by
25 Defendant ROMULUS.

26 19. PLAINTIFFS are informed and believe and thereon allege
27 that there exists, and at all times herein mentioned there existed,
28 a unity of interest and ownership between Defendants BREEN and

1 EASTON, and Defendants THE 22ND CENTURY CORPORATION, ROMULUS
2 CORPORATION, SMG CORPORATION, GENERAL CELLULAR INTERNATIONAL, INC.,
3 dba CELLULAR INTERNATIONAL, INC., and INDEPENDENT CELLULAR
4 TELEPHONE, INC. (together "Corporate Defendants") such that any
5 individuality and separateness between Defendants BREEN and EASTON,
6 and the Corporate Defendants have ceased, and the Corporate
7 Defendants are the alter egos of Defendants BREEN and EASTON in that
8 Defendants BREEN and EASTON completely controlled, dominated,
9 managed and operated the Corporate Defendants and intermingled their
10 assets with their own to suit the convenience of Defendants BREEN
11 and EASTON and in order to avoid payment of the obligations owed to
12 creditors of Defendants BREEN and EASTON.

13 20. Adherence to the fiction of the separate existence of the
14 Corporate Defendants from Defendants BREEN and EASTON would permit
15 an abuse of the corporate privilege and would promote injustice in
16 that it would allow Defendants BREEN and EASTON, and the Corporate
17 Defendants to profit from their relationships with PLAINTIFFS while
18 allowing them to avoid payments of obligations owed to PLAINTIFFS by
19 Defendants BREEN and EASTON.

20 21. PLAINTIFFS are informed and believe that Defendant PARKS
21 was instrumental in the creation of CELLSWITCH as a general
22 partnership. PLAINTIFFS are further informed and believe that
23 Defendant PARKS aided Defendants BREEN and EASTON in the formation
24 of corporations for the purpose of limiting or avoiding personal
25 liability in the event of litigation.

26 22. PLAINTIFFS are ignorant of the true names and capacities,
27 whether individual, corporate, associate, or otherwise, of
28 Defendants named as DOES 1 to 100, and have therefore sued them by

such fictitious names. Upon discovery of their true names, PLAINTIFFS will seek leave to amend this Complaint to show their true names and capacities, together with apt and proper words to charge them.

23. PLAINTIFFS are informed and believe and thereon allege that at all relevant times, each of the Defendants, including DOES 1 to 100, was the agent, servant and employee of the remaining Defendants and in doing the things herein alleged was acting within the course and scope of such agency or employment and with the consent and permission of the remaining Defendants; and that each of the Defendants, including DOES 1 to 100, proximately caused the damages hereinafter alleged.

24. PLAINTIFFS are informed and believe and thereon allege that DOES 1 to 100 were responsible in some manner for the events and happenings set forth herein. It shall be deemed that whenever and wherever in this Complaint any Defendant, whether specifically named or not, is the subject of any charging allegation, that DOES 1 to 100 are likewise the subject of that charging allegation.

25. The Federal Communications Commission ("FCC") designated 428 markets called Rural Service Areas ("RSA"s) for the purpose of awarding permits and licenses for the construction and operation of cellular telephone systems.

26. In May, 1981, Congress mandated that two cellular operators would exist in each designated RSA to encourage competition. One operator was to be selected from the existing regional wireline telephone companies; the competing entity was to be a non-wireline operator, such as CELLSWITCH. The FCC held two lotteries, administered concurrently for the two operators.

1 27. To participate in this lottery, an applicant was required
2 to provide a financial statement or letter of credit from a lending
3 institution reflecting adequate means to construct a cellular system
4 should they become a successful winner. Applicants also had to
5 submit applications and specified engineering materials prepared in
6 conformity with FCC regulations.

7 28. In the FCC lotteries, the winner of an RSA is initially
8 listed as a "Tentative Selectee," pending challenges from a Petition
9 to Deny from opponents, and screening by the FCC for conformity with
10 its regulations.

11 29. If there are no Petitions to Deny and the Tentative
12 Selectee passes FCC scrutiny, a Construction Permit is usually
13 granted within four to six months which allows the Tentative
14 Selectee eighteen months to build the system, or forfeit it.
15 Following completion of the construction, the FCC inspects the
16 system and grants a license to operate if it conforms to the
17 necessary laws and regulations.

18 30. Defendants ROMULUS, BREEN, EASTON and PARKS (together
19 "DEFENDANTS") held themselves out as having the necessary
20 information and expertise to complete applications for the FCC
21 lottery in conformance with FCC regulations.

22 31. Each of the INDIVIDUAL PLAINTIFFS contacted DEFENDANTS to
23 have them prepare an application for participation in the FCC
24 lottery for allocation of licenses to operate a cellular telephone
25 system in areas designated as RSAs.

26 32. Each individual Plaintiff signed a Service Agreement with
27 Defendant ROMULUS and was assured that all the details of the
28 application preparation, conformity and legal requirements would be

1 taken care of by DEFENDANTS who were to prepare the applications,
2 handle the FCC fees and submit the requisite engineering material,
3 all letter-perfect and defect-free with conformity to current FCC
4 regulations.

5 33. Following the signing of the Contracts, Defendant ROMULUS
6 brought together PLAINTIFFS and assigned them to CELLSWITCH, a pre-
7 formed General Partnership designed to consist of 20% maximum non-
8 U.S. citizen interest holders.

9 34. On or about July 20, 1989, CELLSWITCH won in the FCC
10 lottery and was named Tentative Selectee for the RSA designated as
11 "Louisiana-7 (West Feliciana)." The Louisiana-7 RSA is a market
12 potentially very valuable to any cellular system operator.

13 35. Subsequent to CELLSWITCH being named Tentative Selectee,
14 a partnership named Continental Cellular was dismissed by the FCC
15 for having non-citizen members in its General Partnership structure,
16 thus violating the FCC's regulation prohibiting alien participation
17 in management affairs. Continental Cellular then restructured its
18 partnership into a Limited Partnership, thus insulating non-citizens
19 from the management of the partnership.

20 36. CELLSWITCH also reacted and had counsel amend its
21 structure into a Limited Partnership in order to insulate non-
22 citizens from management. Soon after, at least 20 partnerships,
23 mostly ROMULUS applicants now made aware of this alleged infraction,
24 amended their respective applications to reflect Limited Partnership
25 status.

26 37. Continental Cellular, being the first to win in the
27 lottery process was also first to be cited by the FCC for this
28 infraction, thus establishing a precedent for the other 20 plus

1 partnerships with similar defects. Continental Cellular has thus
2 become the test case for all affected partnerships.

3 38. After restructuring the Partnership Agreement, Continental
4 Cellular was given notice of its dismissal based on the alien
5 ownership issue. It was informed that inasmuch as its conversion to
6 Limited Partnership was after the lottery commenced and
7 qualification is based upon the structure of the partnership as it
8 stood at the time of its application prior to the lottery, that the
9 amendment to alter its structure to insulate its alien partners was
10 unacceptable.

11 39. The FCC subsequently gave notice to CELLSWITCH and
12 approximately 20 other partnerships of their dismissals, citing
13 identical circumstances to those of Continental Cellular.

14 40. CELLSWITCH then retained counsel to file a Petition for
15 Reconsideration before the FCC. Continental Cellular had previously
16 filed a similar Petition which was denied. Continental Cellular
17 appealed the denial of its Petition for Reconsideration to the U.S.
18 Court of Appeals for the District of Columbia Circuit ("Court of
19 Appeals") which remanded the Continental Cellular matter back to the
20 FCC on or about October 1, 1990.

21 41. The dismissals of Continental Cellular upon remand, and of
22 CELLSWITCH and 18 other partnerships on their Petitions of
23 Reconsideration were affirmed by the FCC because of the infraction
24 of the regulations regarding participation by non-citizens.

25 42. CELLSWITCH, and 19 other partnerships, filed with the
26 Court of Appeals to seek relief from the FCC's capricious and
27 inconsistent interpretation of its regulations in reaching its
28 decision regarding the dismissals. These cases are still pending.

1 48. Furthermore, DEFENDANTS' breach of the Contracts have
2 prevented PLAINTIFFS from making any further application to the FCC
3 as CELLSWITCH, L.P. DEFENDANTS' breach has caused PLAINTIFFS'
4 exclusion from full term participation in the original lottery and
5 in those re-lotteries that have since been held.

6 49. As a direct and proximate result of DEFENDANTS' breach of
7 the Contracts, PLAINTIFFS have been damaged in an amount to be
8 proven at trial, but in any event, in excess of Twenty-Five Thousand
9 Dollars (\$25,000.00).

10 WHEREFORE, PLAINTIFFS pray for judgment as set forth below.

11 SECOND CAUSE OF ACTION

12 (Negligence)

13 50. PLAINTIFFS reallege and incorporate herein by reference
14 paragraphs 1 through 49 of this Complaint as though fully set forth
15 below.

16 51. DEFENDANTS undertook to join PLAINTIFFS into a partnership
17 for the purpose of applying for RSAs under the FCC lottery.
18 DEFENDANTS held themselves out as having the necessary knowledge and
19 expertise to complete applications for the FCC lottery in
20 conformance with FCC regulations and as having more skill and
21 knowledge in this area than the ordinary individual.

22 52. Having undertaken to form the partnership, and having held
23 themselves out as having special knowledge and expertise in this
24 area, DEFENDANTS were under a duty to exercise the level of care and
25 skill to do so in compliance with FCC regulations that a
26 professional engaged in such a business would exercise.

27 53. Within the last two years, DEFENDANTS breached their duty
28 by failing to exercise the necessary standard of care and skill in

forming the partnership and making application to the FCC.

54. As a direct and proximate result of DEFENDANTS' negligence, CELLSWITCH lost its position as Tentative Selectee and preventing it from obtaining a construction permit and license to operate. Even if the Court of Appeals ultimately decides in favor of PLAINTIFFS, they will be damaged as the authorized competitor in the area will have had two years head start in constructing its cellular phone system and developing a market.

55. As a direct and proximate result of DEFENDANTS' negligence, PLAINTIFFS have been damaged in an amount to be proved at trial, but in any event, in excess of Twenty-Five Thousand Dollars (\$25,000).

WHEREFORE, PLAINTIFFS pray for judgment as set forth below.

THIRD CAUSE OF ACTION

(Fraud - False Promise)

56. PLAINTIFFS reallege and incorporate herein by reference paragraphs 1 through 55 of this Complaint as though fully set forth below.

57. DEFENDANTS represented to PLAINTIFFS that they would prepare their applications in compliance with FCC regulations such that they would be "letter-perfect and defect-free."

58. PLAINTIFFS are informed and believe and thereon allege that the representations set forth above were false and that DEFENDANTS knew, or should have known of the falsity of those representations.

59. PLAINTIFFS are informed and believe and thereon allege that DEFENDANTS intentionally made the forgoing false representations to PLAINTIFFS with the intent of misleading

PLAINTIFFS and causing PLAINTIFFS to enter into the Contracts.

60. PLAINTIFFS were unaware of the falsity of the representations described above, and relied upon those representations in deciding to enter into the Contracts. Had they known of the falsity of those representations, they would not have entered into the Contracts. PLAINTIFFS did not become aware of the falsity of these representations until sometime in the last three years.

61. As a direct and proximate result of the false representations made by DEFENDANTS, PLAINTIFFS have sustained damages in an amount to be proved at trial, but in any event, in excess of Twenty-Five Thousand Dollars (\$25,000).

62. PLAINTIFFS are informed and believe and thereon allege that in doing the things herein alleged DEFENDANTS acted intentionally, willfully, fraudulently, maliciously, with the intent and for the purpose of injuring PLAINTIFFS, and PLAINTIFFS are therefore entitled to an award of exemplary damages in an amount sufficient to deter DEFENDANTS from similar conduct in the future.

WHEREFORE, PLAINTIFFS pray for judgment as set forth below.

FOURTH CAUSE OF ACTION

(Negligent Misrepresentation)

63. PLAINTIFFS reallege and incorporate herein by reference paragraphs 1 through 62, of this Complaint as though fully set forth below.

64. PLAINTIFFS are informed and believe and thereon allege that the representations set forth above were false and that DEFENDANTS made those representations with no reasonable grounds for believing them to be true.

1 information not accessible to their clients. In reliance upon
2 DEFENDANTS' superior knowledge and expertise PLAINTIFFS reposed
3 trust and confidence in them and in their integrity, fidelity and
4 expertise.

5 70. By virtue of having held themselves out as experts in the
6 completion of FCC applications, their undertaking of the formation
7 of partnerships on behalf of their clients, their superior knowledge
8 and information and PLAINTIFFS' reposing of trust and confidence in
9 their integrity, fidelity and expertise, DEFENDANTS stood in the
10 position of fiduciaries to PLAINTIFFS.

11 71. Over the period of time from the formation of the
12 Partnership to the present, DEFENDANTS breached their fiduciary
13 duties by failing to structure the Partnership in such a way as to
14 comply with FCC regulations.

15 72. In acting as described above, DEFENDANTS failed to
16 exercise the care required by a promoter in that they acted contrary
17 to the terms of the Contracts and unduly profited from the formation
18 of the Partnership and otherwise obtained advantage over PLAINTIFFS
19 in the establishment of the Partnership.

20 73. As a result of DEFENDANTS' breach of their fiduciary
21 duties, PLAINTIFFS have sustained damage in an amount to be proved
22 at trial, but in any event, in excess of Twenty-Five Thousand
23 Dollars (\$25,000).

24 74. PLAINTIFFS are informed and believe and thereon allege
25 that in doing the things herein alleged DEFENDANTS acted
26 intentionally, willfully, fraudulently, maliciously, with the intent
27 and for the purpose of injuring PLAINTIFFS, and PLAINTIFFS are
28 therefore entitled to an award of exemplary damages in an amount

1 sufficient to deter DEFENDANTS from similar conduct in the future.

2 WHEREFORE, PLAINTIFFS pray for judgment as set forth below.

3 PRAYER FOR RELIEF

4 AS TO THE FIRST CAUSE OF ACTION:

5 1. For damages in an amount to be proved at trial but in any
6 event in excess of Twenty-Five Thousand Dollars (\$25,000), plus
7 interest thereon as provided by law;

8 2. For costs of suit herein incurred; and

9 3. For such other and further relief as the court deems
10 proper.

11 AS TO THE SECOND CAUSE OF ACTION:

12 1. For damages in an amount to be proved at trial but in any
13 event in excess of Twenty-Five Thousand Dollars (\$25,000), plus
14 interest thereon as provided by law;

15 2. For costs of suit herein incurred; and

16 3. For such other and further relief as the court deems
17 proper.

18 AS TO THE THIRD AND FIFTH CAUSES OF ACTION:

19 1. For damages in an amount to be proved at trial but in any
20 event in excess of Twenty-Five Thousand Dollars (\$25,000), plus
21 interest thereon as provided by law;

22 2. For exemplary and punitive damages according to proof;

23 3. For costs of suit herein incurred; and

24 4. For such other and further relief as the court deems
25 proper.

26 AS TO THE FOURTH CAUSE OF ACTION:

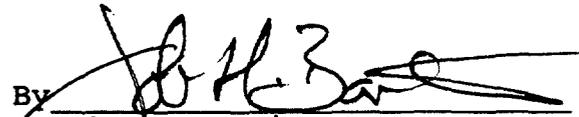
27 1. For damages in an amount to be proved at trial but in any
28 event in excess of Twenty-Five Thousand Dollars (\$25,000), plus

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interest thereon as provided by law;
2. For costs of suit herein incurred; and
3. For such other and further relief as the court deems proper.

DATED: November 3, 1992

BELL, ROSENBERG & HUGHES

By 
John H. Banister
Attorneys for Plaintiffs

R2059

CELLULAR APPLICATION SERVICES AGREEMENT

This Agreement is entered into this 13th day of November, 1987, by and between Romulus Engineering TM, Inc. ("Romulus") and B and S Investments ("Applicant") with reference to the following facts:

- A. Romulus is a Delaware Corporation, with its principal office located at 118 World Trade Center, San Francisco, CA, 94111.
- B. Romulus is engaged in the business of providing engineering for and preparation of non-exclusive applications for new common carrier radio station authorizations under Part 22 for Domestic Public Cellular Radio Telephone Service (DPCRTS) ("Applications") for selected Federal Communication Commission ("FCC") market areas in accordance with the Communications Act of 1934, as amended, and FCC rules, regulations, reports and orders.
- C. An Application for a DPCRTS Authorization ("License") submitted to the FCC is only an opportunity to participate in a random selection process (lottery) wherein an FCC construction permit for a cellular telecommunication operating system will be awarded. There is no assurance that an Applicant will win any interest in any market as a result of filing an Application.
- D. The FCC has previously accepted applications for the designated Metropolitan Statistical Areas ("MSAs") and has announced its intention to designate additional Regional or Rural Service Areas ("RSA's") for markets to be defined by counties for which cellular licensing has not yet been authorized.
- E. The FCC has defined the RSA's for which applications may be filed, but as of June 15, 1987 has not announced the filing dates for such applications.
- F. The purpose of this Agreement is to retain Romulus to engineer and prepare for filing with the FCC non-exclusive applications for one or more DPCRTS Licenses for the Applicant for market areas which will include the markets designated herein by Applicant within RSAs to be designated by the FCC.

IN WITNESS WHEREOF, the parties hereto agree as follows:

- 1. **Romulus Scope of Work.** Romulus shall prepare for Applicant an Application for each RSA ordered by Applicant, which shall include all information required by the FCC for filing an initial Application, including all engineering, engineering forms required under the FCC reports and orders, rules, regulations, technical memoranda, releases, and other guidelines required by the Commission.
- 2. **Filing of Applications.** Romulus shall deliver Applications, prepared as described in Paragraph 1, to the FCC during the filing period as established by the FCC. ~~IT SHALL BE THE RESPONSIBILITY OF APPLICANT TO DELIVER TO ROMULUS APPLICABLE FCC FILING FEES MADE PAYABLE TO THE FCC. SAID FILING FEES SHALL BE DELIVERED TO ROMULUS NO LATER THAN 30 DAYS PRIOR TO THE FCC FILING DATE APPLICABLE TO THE FILING OF THE APPLICATIONS INVOLVED. IF FCC FILING FEES HAVE NOT BEEN RECEIVED BY ROMULUS WITHIN THIS PERIOD, ROMULUS WILL MAKE NO REFUNDS OR CREDITS TO THE APPLICANT'S ACCOUNT, AND WILL BE DEEMED TO HAVE FULFILLED ALL ITS RESPONSIBILITIES UNDER THIS AGREEMENT.~~
- 3. **Duties of Applicant.** The Applicant is responsible for providing to Romulus correct information, including, but not limited to, ownership, subsidiaries, affiliates, other station and FCC application interests, basis of qualification, and financial commitments required to prepare each Application for the individual Applicant. Romulus disclaims any responsibility for the preparation, completeness or accuracy of those portions of the Cellular Application that are completed from information received from the Applicant.

Upon the request of Romulus, the Applicant shall provide all information necessary for completion of the Applications within the time periods required by Romulus. In the case of any changes with respect to the information supplied by the Applicant for inclusion in the Applications, the Applicant will promptly supply Romulus with corrected information.

- 4. **Applicant Representations and Acknowledgements.** The Applicant understands and acknowledges the following in connection with the Cellular Applications to be prepared by Romulus:
 - a. Romulus makes neither representations nor warranties, express or implied, that the Applicant will be awarded a Cellular Telephone Construction Permit or License for any geographic market.
 - b. The Applicant retains the sole and exclusive right to determine the manner in which any FCC Construction Permit or FCC License will be exploited.
 - c. Romulus is under no obligation and has made no commitment to form an alliance or to assist the Applicant in joining with others to obtain or exploit any Cellular Telephone Construction Permit or License, or to obtain financing to construct or operate any Cellular Telephone System.
 - d. Romulus has not rendered tax advice or direction relative to the Applicant's cost to prepare and file the Cellular License Application.
 - e. The FCC has made numerous changes in eligibility of Applicants and the license awarding procedure in the past and has the authority to do the same in the future. Future changes could substantially alter the value of the Applications prepared by Romulus.
 - f. The Applicant has entered into this contract for the preparation of Applications with the sincere intent that, if successful in the License process, whether in whole or in part the Applicant intends to build and operate or have built and operated by a qualified entity, a cellular telephone system in the area awarded.
 - g. The FCC has not specified as of June 15, 1987 the dates upon which either RSA filings or lotteries will occur.
 - h. Other Applicants will be in competition with the Applicant in obtaining Cellular Telephone Licenses. The more Applications filed for an area, the less likely that the Applicant will be awarded a license in that area.

7-25-94

Name, Address and Telephone No. of Attorney(s)

John H. Banister
BELL, ROSENBERG & HUGHES
P.O. Box 70220, Station "D"
Oakland, CA 94612-0220
(510) 832-8585
(Bar No: 103375)

Attorney(s) for Plaintiffs.....

FILED
Space Below for Use of Court Clerk Only
San Francisco County Superior Court

JUN 14 1994

ALAN CARLSON, Clerk
BY: *[Signature]*
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO
(SUPERIOR, MUNICIPAL, or JUSTICE)

(Name of Municipal or Justice Court District or of branch court, if any)

Plaintiff(s): CELLSWITCH, L.P., et al.

CASE NUMBER 947093

Defendants(s): ROMULUS ENGINEERING, et al.

(Abbreviated Title)

REQUEST FOR DISMISSAL

TYPE OF ACTION

- Personal injury, Property Damage and Wrongful Death:
 - Motor Vehicle
 - Other
- Domestic Relations
- Eminent Domain
- Other: (Specify) Breach of Contract,.....
etc.

TO THE CLERK: Please dismiss this action as follows: (Check applicable boxes.)

- 1. With prejudice Without prejudice
- 2. Entire action Complaint only Petition only Cross-complaint only
- Other: (Specify)*

Dated: June 8, 1994

*If dismissal requested is of specified parties only, or specified causes of action only or of specified cross-complaints only, so state and identify the parties, causes of action or cross-complaints to be dismissed.

[Signature]
Attorney(s) for Plaintiffs CELLSWITCH, L.P.
John H. Banister
(Type or print attorney(s) name(s))

TO THE CLERK: Consent to the above dismissal is hereby given.**

Dated: June 9, 1994

**When a cross-complaint (or Response (Marriage) seeking affirmative relief) is on file, the attorney(s) for the cross-complaint (respondent) must sign this consent when required by CCP 581(1), (2) or (5).

[Signature]
Attorney(s) for
Daniel J. Furniss
(Type or print attorney(s) name(s))

(To be completed by clerk)

- Dismissal entered as requested on
- Dismissal entered on as to only
- Dismissal not entered as requested for the following reason(s), and attorney(s) notified on

_____, Clerk

Dated..... By _____, Deputy

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John H. Banister, Esq. (State Bar No. 103375)
Teresa Jenkins Main, Esq. (State Bar No. 121192)
BELL, ROSENBERG & HUGHES
1300 Clay Street, Suite 1000
P.O. Box 70220, Station "D"
Oakland, California 94612-0220
Telephone: (510) 832-8585

Attorneys for Plaintiffs

FILED
San Francisco County Superior Court

MAR 02 1992

MICHAEL K. TAMONY, CLERK
~~DONALD W. THORNTON, Clerk~~
BY Frank H. Henton
Deputy Clerk

PLAN I 8:30 a.m.
STATUS CONFERENCE DATE: AUG 28 1992

\$182.00

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

FEDERAL MOBILE RADIO, L.P., a)
Delaware Limited Partnership;)
RAYMOND MOSER; WILLIAM)
BAIBIANO; STEPHEN CHAN;)
ANTONIO CUCALON; EARL H.)
JONES, JR.; ANNETTE MARIE)
SCHOLTEN; RICHARD SAMARAS;)
DICKSON NG; CAROL R. WILSON;)
ANGELA N. TRAUB; JAMES N.)
JANKY; RICHARD KENNON; SHIRLEY)
HILLARD; GUENTHER VON)
UCKERMANN; JAMES R. RICHMAN;)
JEAN-PAUL BERGES; AIDA Q.)
TORRES; LEO E. KALCIC; FRANK)
A. KALCIC; LILA F. JAEGER;)
SCOTT P. FLEMING; CARL F.)
NELSON; WILLA NAN NELSON;)
FORTON A. CHRISTOFFER; CHARLES)
J. WILLIAMS; KURT DAGENBACH;)
JOSEPH F. LINK; JULIE ANN)
RIANDA; and EDWARD SKRABACZ,)
individuals,)

Plaintiffs,)

v.)

ROMULUS ENGINEERING, INC., a)
Delaware corporation; QUENTIN)
L. BREEN; ANTHONY T. EASTON,)
individuals, and DOES 1)
through 20, inclusive,)

Defendants.)

No. **941022**

COMPLAINT FOR BREACH OF
CONTRACT, NEGLIGENCE, FRAUD,
NEGLIGENT MISREPRESENTATION AND
BREACH OF FIDUCIARY DUTY
Contract A.B.

1 PLAINTIFFS hereby allege as follows:

2 GENERAL ALLEGATIONS

3 1. Plaintiff FEDERAL MOBILE RADIO, L.P. ("FEDERAL") is a
4 Limited Partnership, organized and existing under the laws of the
5 State of Delaware with its principal place of business in the County
6 of Alameda, State of California.

7 2. Plaintiffs RAYMOND MOSER; WILLIAM BAIBIANO; STEPHEN CHAN;
8 EARL H. JONES, JR.; ANNETTE MARIE SCHOLTEN; RICHARD SAMARAS; DICKSON
9 NG; CAROL R. WILSON; JAMES N. JANKY; RICHARD KENNON; SHIRLEY
10 HILLARD; GUENTHER VON UCKERMANN; JAMES R. RICHMAN; AIDA Q. TORRES;
11 LEO E. KALCIC; FRANK A. KALCIC; LILA F. JAEGER; SCOTT P. FLEMING;
12 CARL F. NELSON; WILLA NAN NELSON; FORTON A. CHRISTOFFER; CHARLES J.
13 WILLIAMS; KURT DAGENBACH; JOSEPH F. LINK; JULIE ANN RIANDA; and
14 EDWARD SKRABACZ are General Partners in FEDERAL and clients of
15 Defendant ROMULUS ENGINEERING, INC. Plaintiffs ANTONIO CUCALON,
16 ANGELA N. TRAUB, and JEAN-PAUL BERGES are Limited Partners in
17 FEDERAL and clients of ROMULUS ENGINEERING, INC. (Hereinafter the
18 General and Limited Partners shall be referred to together as
19 "INDIVIDUAL PLAINTIFFS" and together with FEDERAL, as "PLAINTIFFS").

20 3. PLAINTIFFS are informed and believe and thereon allege
21 that Defendant ROMULUS ENGINEERING, INC. ("ROMULUS"), is a
22 corporation organized and existing under the laws of the State of
23 Delaware and licensed to do business in California. The principal
24 place of business is, and at all times herein mentioned was in the
25 city and county of San Francisco, California.

26 4. PLAINTIFFS are informed and believe and thereon allege
27 that Defendant QUENTIN L. BREEN ("BREEN") is and at all times herein
28 mentioned was, a resident of the State of Oregon, whose business

1 activities in California are substantial, continuous and systematic.

2 5. PLAINTIFFS are informed and believe and thereon allege
3 that Defendant ANTHONY T. EASTON ("EASTON") is, and at all times
4 herein mentioned was, a resident of the County of San Mateo,
5 California.

6 6. Between July, 1987 and May, 1988, INDIVIDUAL PLAINTIFFS
7 each entered into a contract with Defendant ROMULUS entitled
8 "Cellular Application Services Agreement" (together "the
9 Contracts"). A true and correct copy of one of the Contracts is
10 attached as Exhibit A and incorporated herein by reference.

11 7. PLAINTIFFS are informed and believe and thereon allege
12 that Defendant BREEN is the President of Defendant ROMULUS.

13 8. PLAINTIFFS are informed and believe and thereon allege
14 that Defendant EASTON is the Chairman and Chief Executive Officer of
15 Defendant ROMULUS.

16 9. PLAINTIFFS are informed and believe and thereon allege
17 that there exists, and at all times herein mentioned there existed,
18 a unity of interest and ownership between Defendants BREEN and
19 EASTON, and Defendant ROMULUS, such that any individuality and
20 separateness between Defendants BREEN and EASTON, and Defendant
21 ROMULUS have ceased, and Defendant ROMULUS is the alter ego of
22 Defendants BREEN and EASTON in that Defendants BREEN and EASTON
23 completely controlled, dominated, managed and operated Defendant
24 ROMULUS and intermingled its assets with their own to suit the
25 convenience of Defendants BREEN and EASTON and in order to avoid
26 payment of the obligations owed to creditors of Defendant ROMULUS.

27 10. Adherence to the fiction of the separate existence of
28 Defendant ROMULUS from Defendants BREEN and EASTON would permit an

1 abuse of the corporate privilege and would promote injustice in that
2 it would allow Defendants BREEN, EASTON and ROMULUS to profit from
3 their relationships with PLAINTIFFS while allowing them to avoid
4 payments of obligations owed to PLAINTIFFS by Defendant ROMULUS.

5 11. PLAINTIFFS are ignorant of the true names and capacities,
6 whether individual, corporate, associate, or otherwise, of
7 Defendants named as DOES 1 to 20, and have therefore sued them by
8 such fictitious names. Upon discovery of their true names,
9 PLAINTIFFS will seek leave to amend this Complaint to show their
10 true names and capacities, together with apt and proper words to
11 charge them.

12 12. PLAINTIFFS are informed and believe and thereon allege
13 that at all relevant times, each of the Defendants, including DOES
14 1 to 20, was the agent, servant and employee of the remaining
15 Defendants and in doing the things herein alleged was acting within
16 the course and scope of such agency or employment and with the
17 consent and permission of the remaining Defendants; and that each of
18 the Defendants, including DOES 1 to 20, proximately caused the
19 damages hereinafter alleged.

20 13. PLAINTIFFS are informed and believe and thereon allege
21 that DOES 1 to 20 were responsible in some manner for the events and
22 happenings set forth herein. It shall be deemed that whenever and
23 wherever in this Complaint any Defendant, whether specifically named
24 or not, is the subject of any charging allegation, that DOES 1 to 20
25 are likewise the subject of that charging allegation.

26 14. The Federal Communications Commission ("FCC") designated
27 428 markets called Rural Statistical Areas ("RSA"s) for the purpose
28 of awarding permits and licenses for the construction and operation