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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEB 07 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of C.F. Communications Corp., et al., Complainants, v. Century Telephone of Wisconsin, Inc., et al., Defendants.	EB Docket No. 01-99 E-93-59

To: Administrative Law Judge
Arthur I. Steinberg

MOTION FOR FINAL SETTLEMENT RULING

Pursuant to Section 1.41 of the Commission's rules, 47 C.F.R. § 1.41, the complainants in File No. E-93-59 (the "Complaint"), by their attorneys, hereby request Your Honor to resolve a settlement-related dispute with the Defendant, Verizon New York Inc. ("Verizon"). For reasons that will be explained herein, New York Pay Phones, Inc. ("NYPay"), the company that originally filed the Complaint, no longer has any interest in the settlement proceeds associated with the Complaint. The former sole shareholders of NYPay—David E. Singleton and Robert A. Howe—possess all interest in the proceeds arising from settlement of the Complaint. Because Singleton and Howe possess all interest in the settlement proceeds, only they are referred to as the Complainants throughout this motion.

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Verizon has insisted that NYPay, which no longer has any interest in the settlement proceeds, sign a settlement agreement and release before entering into a final settlement with the Complainants. NYPay has refused to sign the settlement agreement and release and Verizon will not settle this complaint without NYPay's signature. Wherefore, the Complainants request that Your Honor declare that the settlement proceeds belong to the Complainants and that NYPay's signature on the release and settlement is unnecessary for final resolution of the Complaint.

FACTUAL BACKGROUND

On February 10, 1993, New York Pay Phone Systems, Inc. filed a formal complaint with the Federal Communications Commission ("FCC") against New York Telephone Company, now known as Verizon New York Inc. At that time, Singleton and Howe were the sole shareholders of NYPay and Singleton also served as President of NYPay. *See* the Affidavit of David E. Singleton, ¶3, Exhibit A. On December 23, 1998, NYPay and its sole shareholders—Singleton and Howe—sold all of NYPay's common stock to Alpha Telcom, Inc. ("Alpha") via a stock purchase agreement (the "Agreement"). *See* Agreement, Exhibit B. Under the terms of the Agreement, NYPay assigned to the selling shareholders, Singleton and Howe, its interest in any settlement proceeds. Section 4.8 of the Agreement, pertaining to litigation and disputes, references Exhibit C, which assigns the EUCL litigation proceeds to Singleton and Howe. Exhibit C describes the EUCL litigation as follows:

> Payphone litigation. Action brought by several payphone company owners in concert. Proceeds of recovery, if any, to be

> assigned to selling shareholders, and they to have continuing access to corporate records, if needed.[1]

As a result, the Complainants, Singleton and Howe, possess all interest in the settlement proceeds.

The plain language of the agreement is supported by the affidavit of Singleton, who negotiated and signed the agreement on his own behalf as well as on behalf of NYPay as its President. *See* Affidavit of David E. Singleton, ¶3, Exhibit A. Singleton states that at the time he signed the Agreement, and continuing through today, he understood and intended that the term "payphone litigation" referred to the Complaint. *Id.* at ¶4. He also understood that he and Howe would be entitled to any settlement proceeds. *Id.* at ¶5. Because of his interest in the settlement proceeds, he was the sole representative of Complainant to assist Complainant's counsel with the prosecution of the Complaint. *Id.* at ¶8. During prosecution of the complaint, Singleton was also the sole representative of Complainant to assist Complainant's counsel with the with preparation of interrogatories, responses to document requests, preparation for hearings, and negotiation of the settlement with Verizon. *Id.* No representative from Alpha assisted in any manner in the prosecution of the Complaint.

In October, Verizon and the Complainants reached an agreement in principal resolving all of the parties' disputes associated with the Complaint. The Complainants are prepared to sign a settlement agreement and release, but Verizon has refused to sign the settlement and release without the signature of NYPay.

Although the documents and affidavits make clear that NYPay does not have any interest in any of the settlement proceeds, Complainants attempted, at

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[1] Exhibit A to the Agreement defines the selling shareholders as David E. Singleton and Robert A. Howe.

Verizon's request, to obtain NYPay's signature on the settlement and release. NYPay (as well as Alpha) have filed for bankruptcy in the U.S. Bankruptcy Court, District of Oregon. (Bankruptcy Petition No. 01-40109). Attorneys to the Trustee for NYPay have refused to sign the settlement agreement and release.

The Parties previously requested additional time from Your Honor, through February 11, 2002, to complete the settlement agreement and to secure signatures from the appropriate parties to this litigation. The Parties have been unable to resolve this matter, however, and Complainants therefore request this relief.

SINGLETON AND HOWE POSSESSES THE RIGHT TO THESE SETTLEMENT PROCEEDS AS A MATTER OF LAW

The Agreement provides that it shall be construed under and in accordance with the laws of the State of New York. *See* Agreement, ¶ 10.6, Exhibit B. Under New York law, Singleton and Howe have the right to these settlement proceeds as a matter of law. New York law provides that a contract is to be interpreted so as to give effect to the intent of the parties. *Kairy v. Elo*, 713 N.Y.S.2d 548, 549 (N.Y.App. Div., 2000). "Where, as here, the intent of the parties "is discernible from the four corners of an unambiguously worded agreement," "[i]t is well settled that the determination of that intent can be made as a matter of law. *Pouch Terminal v. HAPAG—LLOYD (America), Inc.*, 569 N.Y.S.2d 122, 123 (N.Y.App. Div., 1991). Even if the language of the Agreement here were "susceptible of varying but reasonable interpretations," this ambiguity could be resolved by looking at extrinsic evidence such as the Affidavit of David Singleton. *Id.*

Under these standards, the plain language of the Agreement, the affidavit testimony of David E. Singleton, and the attendant circumstances leave no doubt that when the parties executed the December 23, 1998 Stock Purchase Agreement, the intent of all involved was for Singleton and Howe to retain the proceeds of this litigation.

REQUEST FOR RELIEF

WHEREFORE, the Complainants request Your Honor to rule that the settlement proceeds belong to Singleton and Howe, that the settlement and release by NYPay is unnecessary to a final resolution of this claim, and order Verizon to execute the settlement agreement and release resolving this claim with ten (10) days of entry of Your Honor's order.

Dated: February 7, 2002

NEW YORK PAY PHONE SYSTEMS, INC.

By: _____

Albert H. Kramer
Katherine J. Henry
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L Street, NW
Washington, DC 20037-1526
(202) 785-9700

EXHIBIT 1

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
C.F. Communications Corp., et al.,	)	
Complainants,	)	EB Docket No. 01-99
v.	)	E-93-59
Century Telephone of Wisconsin, Inc., et al.,	)	
Defendants.	)	

To: **Administrative Law Judge**
Arthur I. Steinberg

AFFIDAVIT OF DAVID SINGLETON

I, David E. Singleton, being duly sworn, state:

1. In 1993, I was President of New York Pay Phone Systems, Inc. ("NYPay"). On February 10, 1993, I authorized my attorneys, Dickstein Shapiro Morin & Oshinsky LLP ("DSMO") to file a complaint with the Federal Communications Commission against New York Telephone Company, now known as Verizon New York Inc. ("Verizon"). The FCC docketed the complaint as File No. E-93-59 (the "Complaint").

2. At the time DSMO filed the complaint, Robert A. Howe and I were the sole shareholders of NYPay.

3. In 1998, while I served as President of NYPay, on behalf of myself and Howe (the sole shareholders of NYPay) and NYPay, I negotiated the Stock Purchase Agreement (the "Agreement") with Alpha Telecom, Inc. ("Alpha"). Under the terms of the Agreement, Alpha obtained 100% of the issued and outstanding shares of voting stock of NYPay.

4. Per the Agreement, NYPay assigned all its rights to any settlement proceeds from the Complaint to Howe and me. Exhibit C to the Agreement contains the following language:

> Payphone litigation. Action brought by several payphone company owners in concert. Proceeds of recovery, if any, to be assigned to selling

shareholders, and they to have continuing access to corporate records, if needed.

At the time I signed the Agreement, and continuing through today, I understood and intended that the term "payphone litigation" refer to the Complaint. This was the intent and understanding of all involved in the negotiation and signing of this Agreement.

5. Based on my participation in negotiation of the Agreement, I understood that Howe and I would be entitled to any settlement proceeds obtained from the Complaint against Verizon. This was the intent and understanding of all involved in the negotiation and signing of this Agreement.

6. On December 23, 1998, I executed the Agreement both as a selling shareholder and also as President of NYPay.

7. Following execution of the Agreement, I did not have any ownership or other interest in NYPay.

8. Because of my interest in any settlement proceeds obtained from the Complaint, I was the sole representative of the Complainant who assisted DSMO in prosecution of the Complaint against Verizon. Among other matters, I assisted the attorneys with preparation of interrogatories, responses to document requests, preparation for hearings, and negotiation of the settlement with Verizon. No representative from Alpha assisted in any manner in the prosecution of the Complaint.

9. In October I authorized DSMO to enter into an agreement in principal with Verizon and accept a sum certain in settlement of the Complaint.

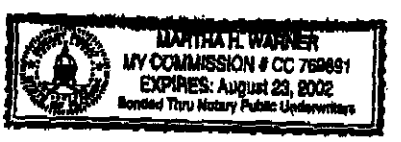
Further, the affiant sayeth not.

State of Florida
County of Volusia

Martha H Warner

Sworn to and subscribed before
me this 7 day of February, 2002

My Commission expires:



David E. Singleton
767 Sandy Hill Cir
Port Orange, FL 32127

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EXHIBIT 2

STOCK PURCHASE AGREEMENT

STOCK PURCHASE AGREEMENT dated December 23, 1998 by and among all the Shareholders of **New York Payphone Systems, Inc.** as listed on Exhibit "A" (the "Shareholders"), **New York Payphone Systems, Inc.**, a New York corporation (the "Company"), with its registered office at New York State Route 50, Ballston Spa, New York 12020, and **Alpha Telcom., Inc.**, an Oregon corporation ("the Purchaser") with its registered office at 2751 Highland Avenue, Grants Pass, Oregon, 97526.

A. The Company has authorized capitalization of 200 shares of common stock, without par value.

B. The Company currently has 200 shares of common stock issued and outstanding, 150 shares of which is owned by the Shareholders as set forth in Exhibit "A".

C. Purchaser wants to buy and the Company wants to sell an aggregate of 200 shares of common stock (the "Shares") which will, immediately after the closing, comprise an aggregate of one hundred percent (100%) of the issued and outstanding shares of voting stock of the Company.

Based upon the foregoing, the parties agree as follows:

SECTION I

PURCHASE AND SALE OF SHARES

1.1 Purchase and Sale of Shares. Subject to all of the terms and conditions hereof, the Company hereby agrees to issue and sell, transfer, assign and deliver to Purchaser on the Closing Date (as such term is defined in Section 8.1), and Purchaser agrees to acquire

and purchase from the Company on such date the Shares. Immediately after the closing the Purchaser's ownership of the Shares will entitle the Purchaser to vote in the aggregate one hundred percent (100%) of the voting rights of the Company's issued and outstanding capital stock.

It is acknowledged and agreed that the individual shareholders are also owners of a related corporation known as US Inter/Com, Inc., and that no shares or interest of any kind in said business is included in this sale, and no term or condition of this contract shall apply to said corporation or to the individual shareholders as shareholders of that corporation.

SECTION 2

CONSIDERATION, PURCHASE OF SHARES, CONSENTS

2.1 Consideration for Shares. In consideration of the sale of the Shares on the Closing Date, Purchaser shall pay to the sellers the amount of $1,200,000.00, said amount to be paid as follows:

(a) upon the execution of this agreement, the amount of $100,000.00 in cash, as and for a good faith deposit. This amount shall be held by the seller and applied to the purchase price for the shares at closing. Should this agreement be canceled by the purchaser, $50,000.00 of this deposit shall be deemed non-refundable, and the remainder of the deposit shall be returned to the purchaser.

(b) the balance of **$1,100,000.00** cash at closing for the outstanding shares of the Seller, subject to adjustment as set forth below.

2.2 Adjustment to Purchase Price. At the time of the execution of the contract, the corporation currently possesses 374 pay phone locations. If, at time of closing, the seller corporation, through its efforts obtains additional locations, through verifiable contracts, the Purchaser promises and agrees to pay to the Sellers the additional amount of $3,000.00 for each pay phone location obtained after November 23, 1998.

2.3 Payment of Corporate Debts from Purchase Price; Accounts Receivable of Corporation; Exemptions; other adjustments. (a) The parties agree that from the purchase price, all debts, excepting monthly payments, if any, which may be due and payable in the ordinary course of the company's phone business shall be paid, and that any accounts receivable, other than ongoing income from the payphone business of the Company shall be collected by and distributed to the sellers.

(b) The corporation shall transfer ownership of the following assets to the sellers at the closing, and the following will not be considered as corporate assets:

(1) Ford Bronco

(2) Land Rover - leased for former head of Western Division. The individual continues to be solely responsible for lease payments, but vehicle is owned by the corporation. At the closing, any balance

owed on lease will be paid, and the vehicle removed from ownership of the corporation.

(3) Any interest in settlement with R.H. Donnelly regarding advertising in phone books from March of 1998 to closing.

(4) Gross receipts or any other tax payable to be prorated to day of closing.

(c) **Adjustments.** Adjustments to the purchase price in favor of the Seller shall be made at closing to reimburse the sellers for the following:

1. Line Deposits for phones made to telephone companies.
2. Prepayment for permit fees to municipalities for payphones.

2.4 Closing. The closing of the purchase of the shares shall take place at the office of Counsel for the Company (Salmon Salmon and Goodman, LLP., 179 Wallins Corners Road, Amsterdam, New York 12010) on or before January 31, 1999, or if mutually agreed upon, said date may be extended as mutually agreed upon by the parties for no more than 30 days from the above closing date..

2.5 Consents and Contingency. This Agreement is contingent upon the following:

a. The right of the Purchaser to conduct such due diligence review as they may deem appropriate, regarding all matters of contracts, financials, books, records, creditworthiness, encumbrances on assets, etc, The parties agree that the purchaser, given the information previously supplied, and supplied with this contract

shall enable purchaser and its agents to complete this due diligence review by December 15, 1998.

Closing and transfer of any shares under this contract by or to another party shall be deemed completion of such due diligence review to that party's satisfaction, and that there remains no impediment by said party to close, or any further review which to that party is necessary.

b. Confidentiality of Due Diligence Review, The Purchasers agree that the contents of this review shall remain strictly confidential and that they agree that they shall not reveal any such information to a third person, other than to a professional retained by them to assist them in this review or involved in the closing of this transaction, and only in connection with said review. Should this contract not close, it is agreed that the transmittal of any confidential or business proprietary information of the Company to third persons shall be actionable at law or equity.

SECTION 3

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Purchaser represents and warrants to the Company as follows:

3.1 Authority Relative to this Agreement. Purchaser has the power and legal capacity to enter into this Agreement and to carry out its obligations hereunder. This Agreement constitutes the valid and binding obligation of Purchaser enforceable against it in accordance with its terms.

3.2 Litigation. There are no claims, actions or proceedings pending or threatened against Purchaser in which it is sought to restrain or to prohibit, or to obtain damages or other relief in connection with, this Agreement or the consummation of the transactions contemplated hereby.

3.3 Investment Intent. The Shares to be received by the Purchaser on the Closing Date are being acquired by Purchaser for investment for an indefinite period for his own account, not as a nominee or agent, and not with a view to the sale or distribution of any part thereof. Purchaser has no present intention of selling, granting participation in, or otherwise distributing such shares, and does not have any contract, undertaking, agreement or arrangement with any person or other entity to sell, transfer or grant participation to such persons or to any third person, with respect to such shares.

3.6 Authority Relative to this Agreement. The Purchaser has the corporate power to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by the Purchaser's Board of Directors and its Shareholders and no other corporate proceedings on the part of the Purchaser are necessary to authorize this Agreement and the transactions contemplated hereby. This Agreement constitutes the legal, valid and binding obligations of the Purchaser enforceable against it in accordance with its terms.

SECTION 4

REPRESENTATIONS AND WARRANTIES ABOUT THE COMPANY

To induce Purchaser to enter into this Agreement and to consummate the transactions contemplated herein, the Company and each Shareholder, jointly and severally, represents and warrants to the Purchaser as follows:

4.1 Organization of the Company. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has corporate power to own, lease, license, and use its properties and assets and to carry on its business as it is now being conducted or in which it contemplates engaging. The Company is duly qualified to do business and is in good standing in each jurisdiction in which the ownership or leasing of properties by the Company in the conduct of its business or the nature of its business requires such qualification.

4.2 Operations. The Company does not directly or indirectly own any interest in any corporation, partnership, joint venture or other business association or entity.

4.3 Charter and By-Laws. A true, correct and complete copy of each of the charter documents and By-Laws of the Company, including all amendments thereto, are attached hereto as Exhibit "B".

4.4 Capitalization. The authorized capital stock of the Company consists of 200 shares of common stock, without par value per share, of which 150 shares are validly issued and outstanding. All such shares are fully paid and non assessable, and owned beneficially and of record by the Shareholders free and clear of all liens, charges, equities, security interests, claims and other

encumbrances. There are no outstanding options, rights, warrants or convertible securities or securities convertible into or which otherwise confer on holders thereof any right to acquire any shares of any class of capital stock of the Company.

4.5 Authority Relative to this Agreement. The Company has the corporate power to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by the Company's Board of Directors and its Shareholders and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement and the transactions contemplated hereby. This Agreement constitutes the legal, valid and binding obligation of the Company enforceable against it in accordance with its terms.

4.6 No Filings or Consents. The Company is not subject to or obligated under (i) any charter of By-law provision, or (ii) any indenture, loan document or other contract, license, franchise, permit, order or decree, which would be breached or violated by its executing and carrying out this Agreement, other than, in the case of clause (ii) only, any breaches or violations which, either singly or in the aggregate, will not have a material adverse effect on the Company. No filing or registration with, or authorization, consent or approval of, any body or authority or consents from third parties is necessary for the consummation by the Company of the transactions contemplated by this Agreement.

4.7 Employees. The Company has no employment, consulting, pension, profit sharing, retirement agreements or any other type of

agreement in effect for any employee, officer, director, consultant and agent, except a SAR/SEP pension plan. There are no claims or liabilities pending or threatened against or affecting the Company with respect to any of the foregoing which are in any way material. As above set forth, The Company does have, and contributes to a pension, profit sharing, option, other incentive plan, or any other type of Employee Benefit Plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended).

Notwithstanding the above, it is agreed and understood that the 4 existing employees of the Company shall, subject to prudent management and personnel policies and practices following the closing, with regard to any employee, shall be retained following the purchase, so long as said employees meet the standards and criteria of the purchaser. Nothing herein shall be construed to constitute an employment contract with any employee.

4.8 Litigation: Disputes. Except as set forth on Exhibit "C" there is to the best knowledge of the company, no judicial, administrative or arbitral action, suit, investigation or proceeding pending or, to the best knowledge of the Company and the Shareholders, threatened relating to the Company or the transactions contemplated by this Agreement, and no basis exists for any such action, suit, investigation or proceeding. Neither Company nor the Shareholders is a party to, or subject to the provisions of, any judgment, decree or order, relating to the operation of the business or the transactions contemplated by this Agreement.

Continuing Access to Records. It is agreed between the parties, that should any action against the company or against the selling shareholders require access to or copies of any corporate records post closing, that the parties agree that each will have access at such reasonable times and upon reasonable request as they may need in order to respond adequately to any request made necessary by litigation or regulatory, tax, or auditor's request.

4.9 Bankruptcy. The Company is not a party to any pending insolvency proceeding of any nature, including without limitation bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, and the Company has not made any assignment for the benefit of creditors, nor taken any action with a view to, or which could constitute the basis for, the institution of any such insolvency proceeding against it.

4.10 Financial Statements. Annexed hereto as Exhibit "D" is the unaudited balance sheet of the Company as of _____ and the related statement of income and retained earnings for the twelve (12) month period then ended, as compiled by the Company's accountant, _____, and the unaudited balance sheet of the Company as of _____ and the related statement of income and retained earnings for the _____ month period then ended. The financial statements of the company were prepared in accordance with generally accepted accounting principles applied on a consistent basis (except as may be indicated in the notes or the report thereto) and fairly present the financial position of the Company as at the dates thereof and the

results of its operations and changes in its financial position for the periods then ended. Since the date of these statements, the Company has not undergone or suffered any change in its condition (financial or otherwise), properties, assets, liabilities, business, operations or prospects which have been, either singly or in the aggregate, materially adverse to the Company. The Company has no liabilities or commitments, absolute, accrued or contingent, that are not reflected in said financial statements. The accounts receivable of the Company are valid and arose in connection with bona fide business transactions of the Company, and are fully collectible by the Company with no offsets or other claims by any other party.

4.11 Properties. The Company owns no real property. The Company is the owner of and has good and marketable title to all of the assets reported in its financial statements, free and clear of any and all liens, encumbrances, security interest, mortgages, pledges, charges, agreements, rights, options, warrants, restrictions and claims of any kind whatsoever, whether legal or equitable ("Liens"), except such Liens which are set forth on the financial statements of the Company, and such Liens which do not, in the aggregate, interfere in any material respect with, or impose a material burden on, the value or current use of the Company's assets or its business.

4.12 Leases. (a) The Company leases real property known and designated as 1252 Saratoga Road, Ballston Spa, New York 12020 from the Selling Shareholders, and it is agreed by the parties that this lease shall continue, for a portion of the real property under the terms which are set forth below. The real property lease is valid,

subsisting and in full force and effect in accordance with its terms and no default or event of default has occurred and there exists no condition or event which, after notice or lapse of time or both, would constitute a default under any such lease.

(b) modification of the lease following the closing. Following the closing, the Company agrees to continue to lease the rental premises, but under modified terms. The company shall lease the lower floor of the premises (approximately 2/3 of the space in the building.) US Inter/Com, Inc. shall occupy and lease the upper floor with a separate access provided to it by the landlords. The amount of the monthly rental with the landlords shall be reduced to the sum of $900.00 per month. In addition to the rental, the company shall be liable for all taxes, insurance costs, and maintenance relating to the building. The purchaser shall, with the purchase of stock receive title to all office furniture and equipment located in the lower floor, but this shall not be deemed to include the office furniture and equipment of US Inter/Com, located on the upper floor of the building. The modification of the lease shall also grant the purchaser the option for three years to purchase the building at a cost of $175,000.00, upon receipt of yearly option payments of $10,000.00 in the first year; $25,000.00 in the second year and $25,000.00 in the third year. Said payments shall be credited on the purchase price if the option is exercised, but no portion of the monthly rental payment shall be applied.

4.13 Contracts and Agreements. Except as set forth on Exhibit "F" attached hereto, the Company is not a party to any

contract or agreement except as otherwise set forth in this Agreement.

4.14 Banking and Other Accounts. The Company has no banking, brokerage, securities and other accounts, other than the accounts as set forth on Exhibit "G".

4.15 Licenses and Permits. Exhibit "H" set forth a list of all permits, licenses, orders, certificates or approvals (collectively, the "Permits") of all Governmental Authorities or others which are required in order to allow the Company to continue to carry on its business and use its properties as now conducted; and the Company owns or has, and at all times has owned or had, valid material Permits to use all properties necessary of the conduct of the company's business substantially in the manner in which it is presently being conducted. No other Permits are required for the operation of the Company's business.

4.16 Taxes. The Company has filed all federal, state and local tax returns required to be filed for all prior periods, on or before the due dates of such returns, as extended by any valid extensions of time, and has paid all taxes shown due on such federal, state or local income tax returns. For purposes hereof, the term "tax" or "taxes" shall include all federal, state and local income taxes, franchise fees, premium taxes, excise taxes, withholding taxes, ad valorem taxes, gross receipts taxes, customs duties and similar charges, including penalties and interest thereon. The Company has collected and withheld all taxes which it is or has been required to collect or withhold and has timely remitted all such collected and withheld amounts to the appropriate authorities other than taxes which are

being contested in good faith or which have not been fully determined. There has not been any tax deficiency assessed or proposed to be assessed against the Company, and the Company is not a party to any agreement for the extension of time for the assessment of taxes.

4.17 No Liability. Except as otherwise shown in the financial statements, the Company has, to the best of its knowledge no liability of any nature material, of any kind, whether known or unknown, accrued, absolute, contingent or otherwise, whether due or to become due, civil or criminal, relating to its products, services or the operation of its business under any laws, rules, regulations, court orders or decrees in any jurisdiction including, but not limited to, those relating to product liability, workers compensation or employment relationships.

4.18 Compliance with Laws. The Company has complied in all material respects with all federal, state and local laws, ordinances, regulations and orders applicable to the Company and its business, and with any applicable consent orders and voluntary programs of the United States Telecommunications industry.

4.19 Insurance. (a) The Company maintains policies of fire, casualty, liability, workmen's compensation and other forms of insurance in connection with the conduct of the business ("Insurance Policies") in such amounts and against such risks and losses as are sufficient for the operation of the business. All Insurance Policies are in full force and effect in accordance with their respective terms and will remain in full force and effect until the Closing.

(b) Key Man Life Insurance. The Company maintains "key-man" life insurance the purpose of which was to purchase the interest of a deceased shareholder in the event of their death, and disability coverage, to cover a disabled shareholder. It is agreed that in connection with the closing, ownership of these insurance policies will be transferred by this company to US Inter/Com, Inc. and that this company, post closing shall have no liability for these policies, nor any interest in them.

4.20 Brokers. The Company and the Shareholders conducted all negotiations relating to this Agreement and have carried on the transactions contemplated hereby without the intervention of any person acting on behalf of them, in such manner as to give rise to any valid claim against Purchaser for any broker's or finder's fee in connection with the transactions contemplated by this Agreement.

4.21 Disclosure. All documents, instruments, exhibits and other materials delivered or to be delivered by or on behalf of the Shareholders or the Company in connection with this Agreement and the transactions contemplated hereby are to the best of the Company's knowledge, true and complete. The information furnished by or on behalf of the Shareholders and the Company to Purchaser in connection with this Agreement and the transactions contemplated hereby does not and shall not contain any untrue statement to the best of the Company's knowledge, and does not and shall not omit to state any fact required to be stated therein or necessary to make the statement contained therein not false or misleading. There is no fact which the Company and the Shareholders have not disclosed in this Agreement which adversely affects, or shall adversely affect, in any

material fashion, the assets, properties, operations, business, financial condition or prospects of the Company, or the ability of the Company to perform this Agreement.

Toward this end, attached to and made a part of this contract is the prospectus used to market the company to its potential purchasers, a complete inventory of the company (subject to additions, depletion or depreciation in the ordinary course of business, and the income receipts and expenses for each payphone owned by the company).

SECTION 5

COVENANTS AND AGREEMENTS PRIOR TO CLOSING

5.1 Access. At the request of Purchaser, the Company shall give the officers, attorneys, accountants and other authorized representatives of Purchaser reasonable access, during normal business hours and upon reasonable notice, to all of the Company's offices, facilities, properties and personnel. The Company shall furnish the representatives of Purchaser with all such information concerning the Company as such representatives may reasonably request and cause the Company's employees, accountants, independent accountants and attorneys to cooperate fully with such representatives in connection with such review and examination and to make full disclosure to Purchaser of all material facts concerning the Company. No investigation by Purchaser or any of their representatives pursuant to this Section shall affect any representation, warranty or closing condition of any party hereto.

5.2 Conduct of Business. Except as otherwise permitted or expressly contemplated by this Agreement or with the prior written consent of Purchaser, prior to the Closing Date:

(a) The Company shall give Purchaser prompt notice of any change in any of the information contained in the representations and warranties of the Shareholders and the Company hereunder or in the documents furnished in connection herewith, which occurs prior to the Closing.

(b) The Company shall not mortgage, pledge, grant or suffer to exist any Lien on any of the Company's assets or lease or affect any transfer of any of the Company's assets; the Company shall maintain and preserve the Company's assets in good condition and repair, reasonable wear and tear accepted, and maintain in full force all insurance policies in effect of the date of this Agreement.

(c) The Shareholders and the Company shall take or cause to be taken all action and to do or cause to be done all things necessary, proper or advisable to consummate the transaction contemplated herein.

(d) The Shareholders shall and shall cause the Company to abide and observe all ordinances, laws, statutes, rules and regulations relating to the conduct of the Company's business.

(e) The Shareholders shall cause the Company to and the Company shall faithfully abide and observe all of the terms and conditions of the premises' leases and shall not permit any event to continue which would constitute or become a default under any lease and shall not enter into, modify, terminate, amend, renew, renegotiate or expand in any respect, or waive any of its rights under

any lease with respect to leased real property, or any contract, agreement, license, commitment, undertaking or other arrangement with respect to any asset of the Company.

(f) The Shareholders shall cause the Company to and the Company shall operate the Company's business in the ordinary course of business consistent with past practices and shall not enter into any commitments, contracts or agreements which cannot be terminated at will and without penalty.

(g) The Shareholders shall cause the Company to and the Company shall maintain the Company's books, records and files in accordance with past practices and policies except for such changes as are necessary to comply with generally accepted accounting principles.

(h) The Shareholders shall cause the Company to and the Company shall preserve the Company's business organization intact.

(i) The Shareholders shall cause the Company to and the Company shall keep available to the Company the services of its employees.

(j) The Company shall promptly notify Purchaser of any material change in the operation of the Company's business and of any governmental or other complaints, investigations or hearings (or communications indicating that the same may be contemplated), or the institution of litigation, and will keep Purchaser fully informed of such events.

(k) Neither the Shareholders nor the Company shall change the Company's charter documents or other governing instruments.

(l) The Shareholders shall not take any action which would cause the Company to and the Company shall not, except for regular increases in the ordinary course of business consistent with past practices, grant to any employee, officer, director, consultant or independent contractor any material increase in compensation or benefits or to adopt any new employee benefit plan or arrangement of any type or authorized severance pay or the execution of any employment agreement or other compensation arrangement.

(m) The Shareholders shall not take any action which would cause the Company to and the Company shall not increase its staff except in the ordinary course of business.

(n) The Shareholders shall not take any action which would cause the Company to and the Company shall not enter into or extend any lease, except the modification set forth above.

(o) The Shareholders shall not authorize or take any action which would cause the Company to authorize, and the Company shall not make, any direct investment in equity securities or corporate debt securities.

(p) The Shareholders shall not take any action which would cause the Company to and the Company shall not make any capital expenditures or leasehold improvements other than pursuant to binding commitments existing on the date hereof.

(q) The Shareholders shall not take any action which would cause the Company to and the Company shall not merge into or consolidate with any other corporation, or to sell or acquire any business or otherwise effect any capital reorganization.

(r) The Shareholders shall not take any action which would cause the Company to and the Company shall not fail to maintain all of its properties in good repair, order and condition, and to maintain insurance upon all of its properties and with respect to the conduct of its business in amount and kind as now in existence.

(s) The Shareholders shall not take any action which would cause the Company to and the Company shall not enter into any other agreements, commitments, or contracts other than in the ordinary course of business which, individually or in the aggregate, are material to it.

(t) Except as provided in Section 5.2, the Shareholders shall not take any action which would cause the Company to and the Company shall not incur any indebtedness, except in the ordinary course of business which shall be disclosed to Purchaser.

(u) The Shareholders shall not take any action which would cause the Company to and the Company shall not make any loan, credit extension or commitment for any loan or credit extension other than in the ordinary course of business, or any extension or credit to or acceptance of a note from any person or entity who or which has another account or note which is ninety (90) days or more past due.

(v) The Shareholders shall not take any action which would cause the Company to and the Company shall not transfer, assign, mortgage, pledge, or subject to lien, encumbrance, charge or equity or otherwise dispose of, or enter into any contract, agreement or understanding to transfer, assign, mortgage, pledge or subject to lien, encumbrance, charge or equity or otherwise dispose of, any

interest in any of its businesses, properties, rights or assets except for transactions in the ordinary course of business.

(w) The Shareholders shall not, and shall cause the Company to not, enter into any transaction or contract, or amend or terminate any transaction or contract, in connection with the conduct of its business that could reasonably be expected at the time such transaction is entered into, individually or in the aggregate, to have a materially adverse effect upon its business or prospects.

SECTION 6

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligation of Purchaser to purchase and pay for the Shares is subject to the fulfillment, prior to or at the Closing, of the following conditions:

6.1 Deliveries by Shareholders. The Shareholders shall have made or shall cause the Company to have made, delivery to Purchaser of the documents specified in Sections 8.2 and 8.4 hereof.

6.2 Shareholders Agreement Not to compete. There shall be delivered at the closing a covenant by the individual shareholders that, subject to the faithful performance of this contract and all of its terms, they shall not compete with the Company for a period of three (3) years following the closing within the geographic boundaries of the State of New York.

6.3 Consulting Agreement. The individual shareholders shall deliver at the closing a consulting agreement, which shall, for a

term of one year following the closing, and subject to renewal, at the parties' mutual agreement, call for the availability of the consultants at reasonable times to answer inquiries regarding the company and its business enterprises, and to conduct such other and further services as the company and consultant may, by mutual agreement, agree to. The consultants shall each be entitled to an hourly rate of $100.00 for each and every hour required, over one-half hour in duration.

6.4 Representations and Warranties. Each of the representations and warranties by the Shareholders and by the Company contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as though made at and as of the Closing Date.

6.5 Compliance. The Shareholders and the Company shall have performed and complied, in all material respects, with all the covenants, agreements, obligations and conditions required by this Agreement to be performed or complied with by them at or prior to the Closing Date.

SECTION 7

CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SHAREHOLDERS AND THE COMPANY

The obligations of the Shareholders and the Company under this Agreement to be performed at the Closing shall be subject to the fulfillment, prior to or at the Closing, of the following conditions:

7.1 Deliveries by Purchaser. Purchaser shall have made delivery to the Shareholders and the Company of the documents and instruments specified in Sections 8.2 and 8.4.

7.2 Warranties and Representations. The representations and warranties by Purchaser contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as though made at and as of the Closing Date.

7.3 Compliance. Purchaser shall have performed and complied, in all material respects, with all the covenants, agreements, obligations and conditions required by this Agreement to be performed or complied with by Purchaser at or prior to the Closing Date.

SECTION 8
THE CLOSING

8.1 The Closing. The closing (the "Closing") of the purchase of the Shares provided for in this Agreement shall take place on or before January 31, 1999 or at such other time and date as the parties shall mutually agree, at the offices of Salmon Salmon and Goodman, LLP, 179 Wallins Corners Road, Amsterdam, New York 12010.

8.2 Deliveries to Purchaser. At the Closing, the Shareholders shall deliver, or shall cause the Company to deliver, to Purchaser the following:

(a) The Company's stock certificate evidencing the Shares purchased by the Purchaser as specified in Section 1.1, registered in the name of the Purchaser, duly executed on behalf of the Company;

(b) Resolutions of the Shareholders and Board of Directors of the Company duly authorizing the execution, delivery and performance of each of this Agreement, the Shareholders Agreement, the Employment Agreement, and the By-laws by the Company certified by the Secretary of the Company as being in full force and effect as of the Closing; and

(c) Certificate of good standing and authority from the State of New York relating to the Company.

8.3 Omitted

8.4 Other Documents. At the Closing, the Covenant not to compete as provided in Section 6.2 and the Consulting Agreement, as provided in Section 6.3 shall be executed and delivered by the respective parties thereto. In addition, the parties shall execute and deliver such other documents as may be required by this Agreement and as either of them or their respective counsel may reasonably require in order to document and carry out the transactions contemplated by this Agreement.

8.5 Method of Termination. Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated and the transactions abandoned at any time prior to the Closing as follows:

(a) By mutual written consent of Purchaser and the Company.

(b) By Purchaser, if any condition set forth in Section 6 of this Agreement has not been satisfied, or, if not satisfied, waived in writing;

(c) By the Company, if any condition set forth in Section 7 of this Agreement has not been satisfied, or, if not satisfied, waived in writing.

SECTION 9

INDEMNITY

9.1 General Indemnity by the Company and the Shareholders. The Company and the Shareholders jointly and severally shall indemnify Purchaser against, and hold Purchaser harmless from, all losses, liabilities, damages, claims, payments, judgments, orders or decrees of every description, recoveries, costs and expenses, including but not limited to attorneys' fees, paid, suffered or incurred by Purchaser and arising out of, or relating to, in whole or in part, any breach of the representations, warranties or covenants of the Company and the Shareholders set forth herein.

9.2 General Indemnity by the Purchaser. The Purchaser jointly and severally shall indemnify the Company and Shareholders against, and hold the Company and Shareholders harmless from, all losses, liabilities, damages, claims, payments, judgments, orders or decrees of every description, recoveries, costs and expenses, including but not limited to attorneys' fees, paid, suffered or incurred by the Company and the Shareholders and arising out of, or relating to, in whole or in part, any breach of the representations, warranties or covenants of the Purchaser set forth herein.

9.3 Defense. Promptly upon receipt by a party entitled to indemnification hereunder (the "Indemnified Party") of notice of a claim by a third party which may give rise to a claim for indemnification, the Indemnified Party shall give written notice to

the other party (the "Indemnifying Party") of said third party's claim. If the Indemnifying Party gives the Indemnified Party an agreement in writing, in form reasonably satisfactory to the Indemnified Party's respective counsel, to indemnify the Indemnified Party against, and hold the Indemnified Party harmless from, all liability arising from said third party's claim, the Indemnifying Party may, at its own expense, undertake full responsibility for the defense against said third party's claim, and may contest or settle it on such terms as it may reasonably elect. The Indemnified Party shall make or cause to be made such assignments and take such other steps as, in the reasonable opinion of respective counsel for the parties, are necessary to enable the Indemnifying Party to conduct such defense. If the Indemnifying Party shall fail to give the Indemnified Party such an agreement of indemnity, the Indemnifying Party, at its own expense, may nevertheless participate with the Indemnified Party in the defense against said third party's claim and in any and all settlement negotiations relating thereto, but the Indemnifying Party may not unreasonably withhold its consent to any settlement proposed by the Indemnified Party. The Indemnifying Party shall have such access to the records and files of the Indemnified Party relating to said third party's claim as is reasonably necessary for its effective participation in the defense thereof.

SECTION 10

MISCELLANEOUS

10.1 Survival of Representations. The representations, warranties, covenants, agreements and indemnities of any party to

this Agreement contained herein shall survive the Closing Date and the Closing, and all inspections, examinations or audits made by the other party or parties hereto.

10.2 Notices. All notices, demands, requests or other communications (each a "Notice") required or permitted to be given to or made upon the parties hereunder shall be in writing and shall be either personally delivered, mailed, postage prepaid, by registered or certified mail, return receipt requested, sent by commercial overnight carrier or sent by facsimile, wire or other telegraphic communication to the other party addressed as follows, or at such other address as shall be designated by such party by a Notice given in accordance with this Section. Each such Notice shall be deemed given (a) if delivered personally or sent by commercial overnight carrier, when received; (b) if mailed, three (3) Business Days after depositing such notice, postage prepaid, in a mail receptacle under the exclusive legal control of the U.S. Postal Service; and (c) if sent by facsimile wire or other telegraphic communication, upon confirmed transmission. All notices to the Company shall be sent to the Company at 1252 Saratoga Road, Ballston Spa, New York 12020. All notices to the Shareholders shall be sent to them at their addresses set forth on Exhibit "A". All notices to Purchaser shall be sent to it at the address given above.

10.3 Section Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

10.4 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be

deemed an original, but all of which together shall constitute one and the same instrument.

10.5 Expenses. Each party will pay its own expenses, including attorneys and/or accountants fees in connection with this Agreement and the transactions contemplated hereby.

10.6 Governing Law, Arbitration, and Submission to Jurisdiction. This Agreement shall be construed under and in accordance with the laws of the State of New York applicable to agreements made and to be performed entirely in New York, without giving effect to the choice of laws principles thereof. Any controversy arising out of or relating to this Agreement shall be settled by arbitration in accordance with the arbitration rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. The parties hereto consent to the personal jurisdiction of the courts of the State of New York or in the federal courts of the United States located in such state, the parties agreeing that such courts are courts of appropriate jurisdiction and venue, and each party hereby irrevocably waives personal service of process and agrees that a summons and complaint or notices commencing an action or proceeding or arbitration in any such court shall be properly served and shall confer personal jurisdiction if served by certified mail, return receipt requested, to said party, or as otherwise provided by the laws of the State of New York or the United States.

10.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors

and permitted assigns. This Agreement is not assignable without the prior written consent of each of the parties hereto.

10.8 Entire Agreement. This Agreement and Exhibits hereto set forth the entire understanding of the parties with respect to the subject matter hereof. There are no agreements, restrictions, promises, warranties, covenants or undertakings other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and undertakings between the parties with respect to such subject matter.

10.9 Further Assurances. At any time and from time to time, upon the request of one of the parties hereto, the other parties shall execute, deliver and acknowledge or cause to be executed, delivered and acknowledged, such further documents and instruments and do such other acts and things as the requesting party may reasonably request in order to fully effect the purposes of this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth at the beginning of this Agreement.

SELLERS

David E. Singleton

Robert A. Howe

COMPANY NEW YORK PAYPHONE SYSTEMS, INC.

By: _____
DAVID E. SINGLETON Its President

PURCHASER ALPHA TELCOM., INC.

By: _____
PAUL RUBERA Its President

STATE OF NEW YORK
COUNTY OF Montgomery SS:

On the 23 day of December, in the year 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared **DAVID E. SINGLETON and ROBERT A. HOWE** personally known to me or proved to me on the basis of satisfactory evidence to the individual(s) whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Sandra J Steenburg
Notary Public
Comm. Expires : 7/22/2000

SANDRA J. STEENBURG
Notary Public-State of New York
Qualified in County of Fulton
Commission Expires July 22, ~~19~~ 2000

STATE OF NEW YORK
COUNTY OF Montgomery SS:

On the 23rd day of December, in the year 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared **DAVID E. SINGLETON as President of New York Payphone Systems, Inc.** personally known to me or proved to me on the basis of satisfactory evidence to the individual(s) whose names are subscribed to the within instrument and acknowledged to me that they executed the same

in their capacities, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Sandra J. Steenburg
Notary Public
Comm. Expires : 7/22/2009

SANDRA J. STEENBURG
Notary Public-State of New York
Qualified in County of Fulton
Commission Expires July 22, 19 20

STATE OF NEW YORK
COUNTY OF SS:

On the 21 day of December, in the year 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared **PAUL RUBERA, as President of Alpha Telcom, Inc.** personally known to me or proved to me on the basis of satisfactory evidence to the individual(s) whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

OFFICIAL SEAL
PATRICIA J. ALLSBROOK
NOTARY PUBLIC - STATE OF NEVADA
CLARK COUNTY
98-3966-1 My Appt. Expires July 21, 2002

Patricia J. Allsbrook
Notary Public
Comm. Expires : 7/21/2002

AMENDMENT TO CONTRACT

Contract: Stock Purchase Agreement dated December 23, 1998
Purchaser: Alpha Telcom, Inc.
Seller: New York Payhone Systems, Inc.

The parties agree to the following amendment to the above contract.

1. Section 2.2 , entitled **Adjustment to Purchase Price** is amended as follows: The purchaser accepts the number of locations of pay phones of the seller, upon the condition that an additional 10 executed contracts for pay phones are delivered at closing. Any additional contracts in excess of the 10, the purchaser promises and agrees to compensate the seller in the amount of $300.00 per executed contract.

SELLER

NEW YORK PAYPHONE SYSTEMS, INC.

BY: _____
David E. Singleton, President

_____
David E. Singleton

_____
Robert A. Howe

PURCHASER

ALPHA TELCOM, INC.

BY: David G. Winstead
Name: DAVID G. WINSTEAD
Title: General Manager

INDEX OF EXHIBITS

Exhibit A Shareholder List

Exhibit B Charter Documents and By-Laws

Exhibit C Litigation

Exhibit D Company's Unaudited Financial Statements

Exhibit E Leases

Exhibit F Contracts and Agreements (Listing of Franchise Agreements)

Exhibit G Bank Account

Exhibit H Licenses and Permits

Exhibit C

Litigation

1. Yankovics-Shake. These are past litigations against the company for what management believes have been frivolous claims which have been abandoned for several years by the plaintiffs.

2. Payphone litigation. Action brought by several payphone company owners in concert. Proceeds of recovery, if any, to be assigned to selling shareholders, and they to have continuing access to corporate records, if needed.

3. Potential litigation - Menands Mobil. This involves a long-time location, which after several years, the owner is now claiming that he wants the phone removed from the premises, in spite of a long standing contract to keep it there. After many years in the same location, his attorney now claims that the individual who signed the contract lacked the authority to do so. Management believes that the customer after so many years is estopped from claiming this. No litigation is yet commenced, but the potential is there. Management believes that this litigation will not materially affect the assets or income of the company.

4. 2 locations in City of Albany- Stephanie's. The City of Albany, who has issued permits for pay phone locations, has informed the company of its desire to remove these in its efforts to limit access to these phones to alleged drug dealers. Management has informed the City that it can program these phones and place notifications on them to make removal unnecessary, and in any event, permits were granted for these locations. It is unknown at this time what the response of the City will be.

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2002, a copy of the foregoing Motion For Final Settlement Ruling was served by courier, facsimile and/or first-class mail, postage prepaid, as indicated below, on the following parties:

The Honorable Arthur I. Steinberg*
Administrative Law Judge
Federal Communications Commission
445 12th Street, SW
Room 1-C861
Washington, DC 20554

William Caton, Acting Secretary**
Office of the Commission Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-B204
Washington, DC 20554
(Original and 6 Copies)

Tejal Mehta, Esquire**
Federal Communications Commission
Market Disputes Resolution Division
Enforcement Bureau
445 12th Street, SW
Washington, DC 20554

David H. Solomon, Chief**
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Mr. John M. Goodman***
Verizon
1300 I Street, NW
400W
Washington, DC 20005

Ms. Sherry A. Ingram***
Verizon
1320 North Court House Road
Arlington, VA 22201

Merri Jo Outland

*Via facsimile and hand delivery
**Via hand delivery
***Via facsimile and hand delivery