

WC 03-236

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

TYSONS CORNER

8000 TOWERS CRESCENT DRIVE

SUITE 1200

VIENNA, VIRGINIA 22182

(703) 918-2300

DUPLICATE

FACSIMILE

(703) 918-2450

www.kelleydrye.com

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November 5, 2003

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NOV 05 2003

Federal Communications Commission
Wireline Competition Bureau --CPD -- 214 Applications
P.O. Box 358145
Pittsburgh, PA 15251-5145

Re: In the Matter of EPIK COMMUNICATIONS, INCORPORATED Application
For Consent To Transfer Control Of A Company Holding A Blanket Domestic
Section 214 Authorization Pursuant To Section 214 Of The Communications Act

To the Commission:

EPIK Communications, Incorporated ("EPIK") and Progress Telecom, LLC ("PTC") hereby submit for filing an original and five (5) copies of their application for consent to the transfer of control of certain assets of EPIK to a restructured PTC. A copy of Form 159 (Remittance Advice) as well as a check in the amount of \$860.00 in payment of the filing fee for this application are appended.

Enclosed as well is a duplicate of this filing. Please date-stamp the duplicate upon receipt and return it to the delivering courier. If there are any questions regarding this application, please do not hesitate to call Joan Griffin at (703) 918-2320. Thank you in advance for your assistance.

Sincerely,



Winafred Branti

Enclosures

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

In the Matter of)
)
)
EPIK COMMUNICATIONS,) **File Nos.** _____
INCORPORATED)
)
Application For Consent To Transfer)
Control Of A Company Holding A)
Blanket Domestic Section 214 Authorization)
Pursuant To Section 214 Of The)
Communications Act)

APPLICATION FOR TRANSFER OF CONTROL

EPIK Communications, Incorporated (“EPIK”) and Progress Telecom, LLC (“PTC”)¹ (collectively, the “Parties”), pursuant to Section 214 of the Communications Act of 1934, as amended (the “Act”)² and Section 63.04 of the Commission’s Rules,³ hereby request the Commission’s consent to the transfer of control of certain assets of EPIK to a restructured PTC.

PTC is a subsidiary of Progress Telecommunications Corporation (“Old PTC”) and Caronet, Inc. (“Caronet”).⁴ Caronet and Old PTC are indirect, wholly-owned subsidiaries of

¹ On November 4, 2003, Progress Telecom Corporation (“Progress Telecom”), a Florida corporation, was converted into Progress Telecom, LLC, a Delaware limited liability company, through application of Section 214 of the Delaware Limited Liability Company Act, 6 Del. C. c. 18, § 214. Pursuant to Section 214 of the Delaware Limited Liability Company Act, PTC has all the rights and liabilities of Progress Telecom, with PTC’s formation and existence relating back to that of Progress Telecom.

² 47 U.S.C. § 214.

³ 47 CFR § 63.04.

⁴ Old PTC holds a 99.5 percent membership interest in PTC, while Caronet holds a .5 percent membership interest in PTC.

Progress Energy, Inc. ("Progress Energy"). PTC provides wireless infrastructure, collocation and dark fiber services, and wholesale telecommunications broadband services to wireless and international telecommunications carriers, long distance companies, Internet service providers, enterprise customers and competitive local exchange carriers primarily in the southeast U.S.

EPIK is a subsidiary of Odyssey Telecorp, Inc. ("Odyssey"). Like PTC, EPIK provides collocation, dark fiber, and wholesale telecommunications broadband services to wireless and international telecommunications carriers, long distance companies, Internet service providers, enterprise customers and competitive local exchange carriers primarily in the southeast U.S.

On November 3, 2003, the Parties entered into a "Contribution Agreement." The Contribution Agreement provides that Old PTC, Caronet, and EPIK will contribute certain assets to PTC, in return for which PTC will issue membership interests. Following issuance of these membership interests, Old PTC will hold a 55 percent ownership interest; Caronet will hold a 5 percent ownership interest; and EPIK will hold a 40 percent ownership interest. The stock of Caronet will then be sold to Odyssey in return for cash, thereby giving Odyssey an additional 5 percent ownership interest in PTC. Caronet will become a wholly-owned subsidiary of Odyssey. Thus, following consummation of the transactions contemplated by the Contribution Agreement, Old PTC will hold a 55 percent ownership interest in PTC, and Odyssey will hold a 45 percent ownership interest in PTC through EPIK and Caronet.

As discussed below, the public interest is served if the EPIK Assets are transferred to PTC pursuant to the Contribution Agreement. The transfer will help ensure that PTC is a viable long-term competitor to other carriers in the southeastern U.S. At the same time, the procompetitive benefits of the transfer of the EPIK Assets will not be diminished by any anticompetitive effects. PTC will provide high-quality communications services to the

customers of EPIK without interruption and without change in rates, terms or conditions.

The proposed transaction, therefore, serves the public interest, and is fully consistent with the Act and the Commission's Rules. As such, the Parties request that the Commission grant this Application as expeditiously as possible.

Pursuant to Sections 63.04(a) of the Commission's Rules, the Parties set forth the following information in support of this Application:

- (1) The name, address, and telephone number of the Parties are as follows:

EPIK Communications, Incorporated ("EPIK")
c/o Odyssey Telecorp, Inc.
444 High Street, Suite 400
Palo Alto, CA 94301
(650) 470-7500

Progress Telecom, LLC ("PTC")
100 Second Avenue South
Suite 400 South
St. Petersburg, Florida 33701
Telephone: (727) 820-5300
Fax: (727) 820-4918

- (2) EPIK is a corporation organized under the laws of the State of Delaware. PTC is a limited liability company organized under the laws of the State of Delaware.
- (3) Correspondence concerning this Application should be sent to:

If to EPIK:

Richard Saffir
444 High Street, Suite 400
Palo Alto, CA 94301
Telephone: (650) 470-7526

with copies to:

Chérie R. Kiser, Esq.
Mintz Levin Cohn Ferris Glovsky and Popeo PC
701 Pennsylvania Ave. NW
Washington, D.C. 20004-2608
Telephone: (202) 434-7325
Fax: (202) 434-7400
ckiser@mintz.com

If to PTC:

Ronald J. Mudry
President and CEO
Progress Telecom, LLC
100 Second Avenue South
Suite 400 South
St. Petersburg, Florida 33701
Telephone: (727) 820-5851
Fax: (727) 820-5829

with copies to:

Jonathan E. Canis, Esq.
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
Telephone: (202) 955-9664
Fax: (202) 955-9792
canij@kelleydrye.com

Joan M. Griffin, Esq.
KELLEY DRYE & WARREN LLP
8000 Towers Crescent Drive, Suite 1200
Vienna, VA 22182
Telephone: (703) 918-2300
Fax: (703) 918-2450
grifj@kelleydrye.com

- (4) It is anticipated that the following entities will hold 10 percent or more of the ownership interest in PTC following consummation of the transactions contemplated by the Contribution Agreement. Diagrams showing the ownership structure of PTC before and after closing are provided in Attachment 1.

Progress. Progress Telecommunications Corporation (“Old PTC”) will hold approximately 55 percent of the membership interest in PTC. Old PTC is a wholly-owned subsidiary of Progress Capital Holdings, Inc. (“Progress Capital”), which is in turn a wholly-owned subsidiary of Florida Progress Corporation (“Florida Progress”). Old PTC, Progress Capital, and Florida Progress are all U.S. citizens and holding

companies whose address is 410 South Wilmington Street, Raleigh, North Carolina, 27601-1748. Florida Progress is a wholly-owned subsidiary of Progress Energy, Inc. ("Progress Energy"). Progress Energy is a U.S. citizen whose address is 410 South Wilmington Street, Raleigh, North Carolina, 27601-1748. The holdings of Progress Energy include two electric utilities (CP&L and Florida Power) serving more than 2.9 million customers across the Carolinas and Florida. Progress Energy also includes non-regulated operations covering merchant generation, energy marketing and trading, fuel extraction, rail services, and broadband capacity. No shareholders of Progress Energy will hold an ownership interest of 10 percent or more in PTC under the Commission's ownership attribution rules.

EPIK. Odyssey Telecorp, Inc. ("Odyssey"), a U.S. company, owns 100 percent of EPIK. Odyssey is a holding company for telecommunications assets and businesses. Shoreline Associates IX, LLC ("Shoreline") is an investment fund that owns 100 percent of Odyssey. Odyssey and Shoreline are located at 444 High Street, Suite 400 Palo Alto, California 94301. Shoreline's investors are U.S. citizens and include Sean Doherty of 444 High Street, Suite 400, Palo Alto, California 94301 with a 52.8 percent ownership interest. Jay Demetree owns 17.8 percent of Shoreline and Mark Demetree owns 13.3 percent. Both have the following mailing addresses: P.O. Box 47050, Jacksonville, Florida 32247.

- (5) As evidenced by the signatures to this Application, PTC and EPIK certify that no party to this Application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
- (6) On November 3, 2003, the Parties entered into the Contribution Agreement. The Contribution Agreement provides that Old PTC, Caronet, and EPIK will contribute certain assets to PTC, in return for which PTC will issue membership interests. Following issuance of these membership interests, Old PTC will hold a 55 percent ownership interest; Caronet will hold a 5 percent ownership interest; and EPIK will hold a 40 percent ownership interest. The stock of Caronet will then be sold to Odyssey in return for cash, thereby giving Odyssey an additional 5 percent ownership interest in PTC. Caronet will become a wholly-owned subsidiary of Odyssey. Thus, following consummation of the transactions contemplated by the Contribution Agreement, Old PTC will hold a 55 percent ownership interest in PTC, and Odyssey will hold a 45 percent ownership interest in PTC through EPIK and Caronet.
- (7) At present, PTC is primarily a telecommunications "carriers' carrier." Among other things, PTC provides wireless infrastructure, collocation and dark fiber services, and wholesale telecommunications broadband services, including private line, wave and Ethernet services, to wireless and international telecommunications carriers, long distance companies, Internet service providers, enterprise customers and competitive local exchange carriers. PTC provides its services by means of a high-capacity fiber optic network primarily serving the southeastern U.S.

Similarly, EPIK is primarily a telecommunications "carriers' carrier." Among other things, EPIK provides collocation, dark fiber, and wholesale telecommunications

broadband services, including private line, wave, Internet Protocol and Ethernet services, to wireless and international telecommunications carriers, long distance companies, Internet service providers, enterprise customers and competitive local exchange carriers. EPIK provides its services by means of a high-capacity fiber optic network primarily serving the southeastern U.S.

Following consummation of the transactions contemplated by the Contribution Agreement, PTC will continue as a telecommunications "carriers' carrier," and will provide services that are the same or similar to those currently provided by PTC and EPIK, primarily in the southeastern U.S.

- (8) The streamlined processing procedures set forth in Section 63.03 of the Commission's Rules are presumed to apply to this Application because this Application satisfies the criteria set forth in Section 63.03(b)(2). The transaction proposed herein will result in PTC having a market share in the interstate, interexchange market of less than 10 percent; any competitive telephone exchange services or exchange access services provided by PTC will be provided exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and neither EPIK nor PTC are dominant with respect to any service they now provide.
- (9) There are no other applications currently being filed that relate to the proposed transaction. PTC or its subsidiaries will file notifications with respect to certain wireless licenses, exempt telecommunications company certificates, and international Section 214 authorizations after the transaction is consummated.
- (10) The Parties are not requesting special consideration because one or more of the Parties is facing imminent business failure.
- (11) No separately filed waiver requests are being sought in connection with the proposed transaction.
- (12) The public interest is served if the EPIK Assets are transferred to PTC pursuant to the Contribution Agreement. The transfer of the EPIK Assets to PTC is a key part of the Contribution Agreement. The transfer will help ensure that PTC is on firm financial footing and of sufficient size to be a viable long-term competitor to other carriers in the southeastern U.S. As such, PTC following consummation of the Contribution Agreement will provide stronger competition for the ILECs and other entrenched carriers than either PTC or EPIK could provide today. The presence of such a strong competitor in the marketplace will help ensure the maintenance of long-term competition for entrenched carriers and bring stability to the marketplace.

At the same time, the procompetitive benefits of the transfer of the EPIK Assets will not be diminished by any anticompetitive effects. PTC will provide high-quality communications services to the customers of EPIK without interruption and without change in rates, terms or conditions. Furthermore, elimination of EPIK as a competitor will not have a significant impact on competition. Private line wholesale

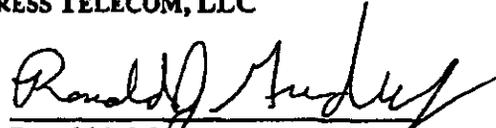
services are the major source of broadband revenue for PTC and EPIK. PTC's primary markets are in the states of Florida, Georgia and North Carolina. EPIK's primary markets are in the states of Florida and Georgia. In the overlapping states of Florida and Georgia, PTC's market shares for private line wholesale services, which exceed those of EPIK, are 3.0 percent and 1.2 percent, respectively. There also are numerous other service providers of private line wholesale services in these markets, including local exchange carriers, competitive local exchange carriers and utility-based carriers. Accordingly, the elimination of EPIK as a competitor in those states will not have a significant impact on the competitiveness of those markets.

For the foregoing reasons, the Parties respectfully request that the Commission grant this Application for consent to the transfer of certain assets of EPIK as expeditiously as possible.

Respectfully submitted,

PROGRESS TELECOM, LLC

By:



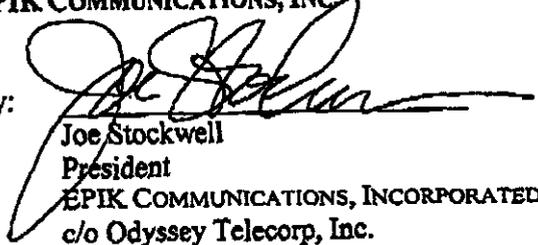
Ronald J. Mudry
President and CEO
PROGRESS TELECOM LLO
100 Second Avenue South
Suite 400 South
St . Petersburg, FL 33701
(727) 820-5851

Jonathan E. Canis, Esq.
KELLEY DRYE & WARREN LLP
1200-19th Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9664

Joan M. Griffin, Esq.
KELLEY DRYE & WARREN LLP
8000 Towers Crescent Drive
Suite 1200
Vienna, VA 22182
(703) 918-2320

EPIK COMMUNICATIONS, INC

By:



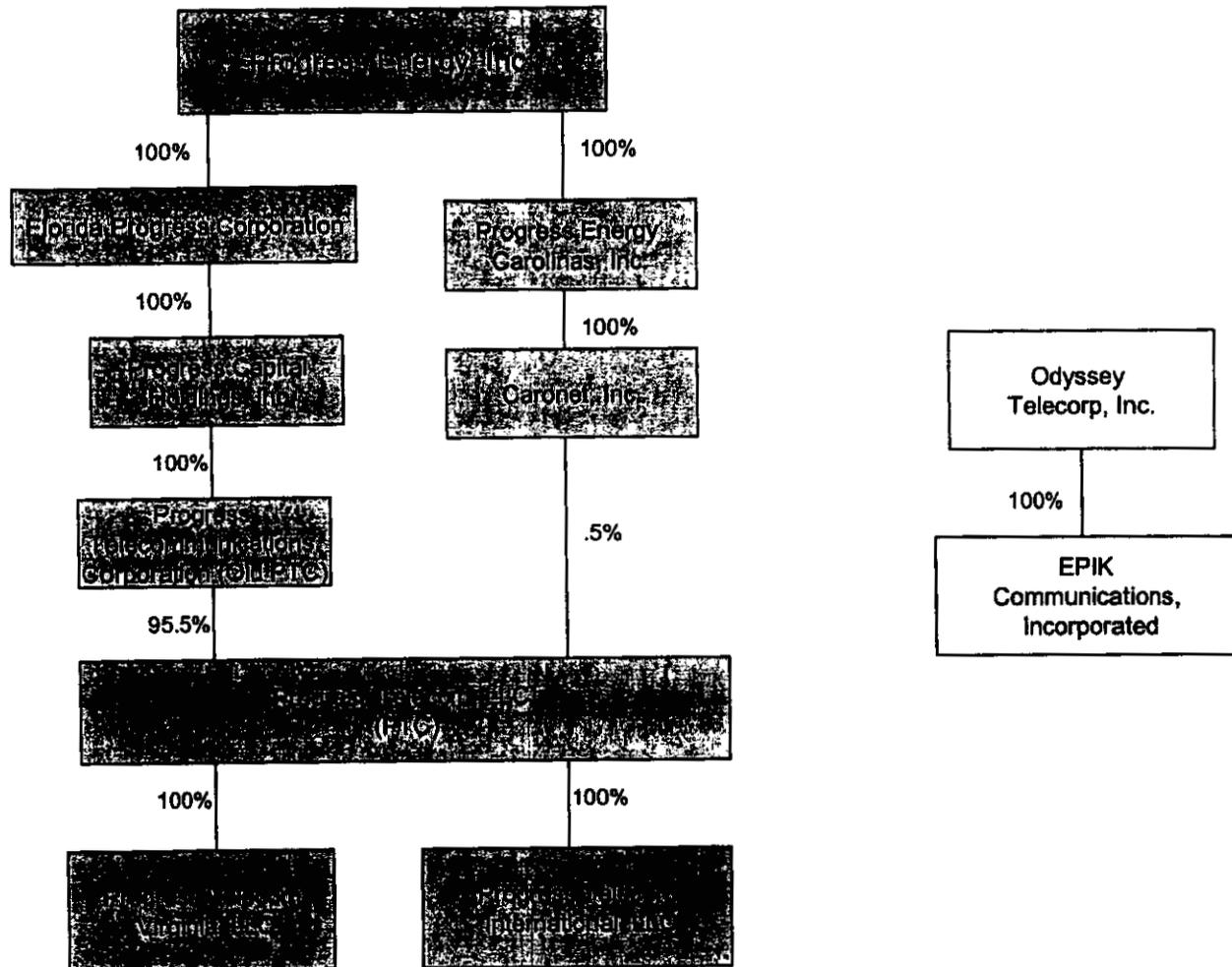
Joe Stockwell
President
EPIK COMMUNICATIONS, INCORPORATED
c/o Odyssey Telecorp, Inc.
444 High Street, CA 94301
Palo Alto, CA 94301
(650) 470-7500

Cherie R. Kiser, Esq.
MINTZ LEVIN COHN FERRIS
GLOVSKY AND POPEO PC
701 Pennsylvania Ave. NW
Washington, D.C. 20004-2608
(202) 434-7325

Their Attorneys

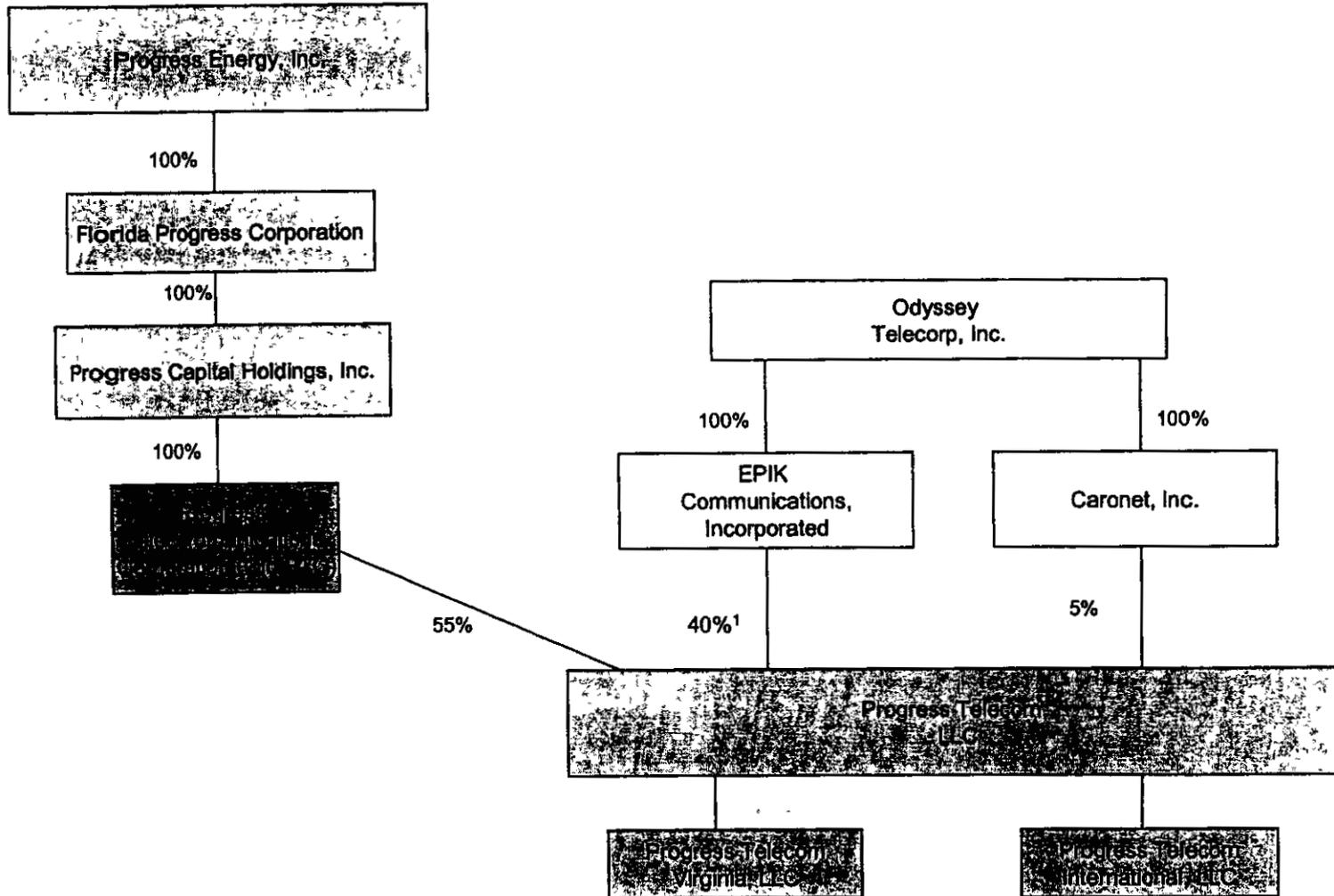
Date: Nov. 4, 2003

Pre-Transaction Corporate Structure



1/ Progress Telecom Corporation was converted into Progress Telecom, LLC on November 4, 2003.

Post-Transaction Corporate Structure



1/ EPIK will grant an irrevocable voting proxy to vote the interests to Old PTC until such time as the necessary regulatory approvals are obtained.

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page 1 of 1

(1) LOCKBOX # 358145			
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Kelley Drye & Warren, LLP		(3) TOTAL AMOUNT PAID (U S Dollars and cents) \$860.00	
(4) STREET ADDRESS LINE NO 1 8000 Towers Crescent Drive			
(5) STREET ADDRESS LINE NO 2 Suite 1200			
(6) CITY Vienna		(7) STATE VA	(8) ZIP CODE 22182
(9) DAYTIME TELEPHONE NUMBER (include area code) 703-918-2315		(10) COUNTRY CODE (if not in U S A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0006554778			
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME EPIK Communications Incorporated			
(14) STREET ADDRESS LINE NO 1 c/o Odyssey Telecorp. Inc			
(15) STREET ADDRESS LINE NO 2 444 High Street, Suite 400			
(16) CITY Palo Alto		(17) STATE CA	(18) ZIP CODE 94301
(19) DAYTIME TELEPHONE NUMBER (include area code) (650) 470-7500		(20) COUNTRY CODE (if not in U S A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0004319265			
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE CUT	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$860.00	(27A) TOTAL FEE \$860.00		
(28A) FCC CODE 1	(29A) FCC CODE 2		
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE		
(28B) FCC CODE 1	(29B) FCC CODE 2		
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>WIMFRED BROWN</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief			
SIGNATURE <u>Wimfred Brown</u>		DATE _____	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described			
SIGNATURE _____		DATE _____	