DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES
SECURITIES SECTION
BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

In the Matter of:	**No. A-03-0012**
ALPHA TELCOM, INC, CHARLES TUMMINO, CHRIS CLAPP, JULIE BLAIR FINGERSON, PAUL FARVER, MELINDA FARVER, JANNA RAMELLI, and DAVID RAMELLI	**STIPULATED ORDER TO CEASE AND DESIST, DENYING EXEMPTIONS , ASSESSING CIVIL PENALTIES AND CONSENT TO ENTRY OF ORDER AS TO CHARLES TUMMINO**
Respondents.	

WHEREAS, the Director of the Department of Consumer and Business Services for the State of Oregon (hereafter the "Director"), acting by and pursuant to the authority of the Oregon Securities Law, Chapter 59 of the Oregon Revised Statutes (hereinafter cited as ORS Chapter 59), and other applicable authority, has a pending investigation into the activities of **ALPHA TELCOM, INC,** (hereafter "Alpha Telcom") **CHARLES TUMMINO**, (hereafter "Tummino") **CHRIS CLAPP**, (hereafter "Clapp") **JULIE BLAIR FINGERSON** (hereafter "Blair Fingerson"), **PAUL FARVER, MELINDA FARVER, JANNA RAMELLI,** and **DAVID RAMELLI**;

WHEREAS, the Director of the Department of Consumer and Business Services issued an Order to Cease and Desist, Denying Exemptions, and Assessing Civil Penalties against, inter alia, Respondent **CHARLES TUMMINO** on November 12, 2003;

WHEREAS, Respondent **CHARLES TUMMINO** requested a hearing on December 18, 2003;

WHEREAS, Respondent **CHARLES TUMMINO** now wishes to avoid the time and expense of an action by or before the Director and desires to obtain disposition of this matter without pursuing his right to a hearing before the Director;

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Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

WHEREAS, Respondent **CHARLES TUMMINO** has acknowledged fully reading and understanding the contents of this Consensual Order to Cease and Desist, Denying Exemptions, and Assessing Civil Penalties (hereafter the "Order"), and has expressly waived any right to a hearing with respect to this matter and to challenge or appeal this Order;

WHEREAS, Respondent **CHARLES TUMMINO** consents to the jurisdiction of the Director of the Department of Consumer and Business Services, State of Oregon for the purpose of this Order and the issuance thereof;

WHEREAS, Respondent **CHARLES TUMMINO** has been notified and understands that a violation of this Order will potentially subject him to the assessment of a further civil penalty or other action by the Director;

NOW THEREFORE, the Director hereby issues the following Findings of Fact and Conclusions of Law, which **CHARLES TUMMINO** neither admits nor denies, and issues the following Order, to which **CHARLES TUMMINO** has consented, as is evidenced by the signature of **CHARLES TUMMINO** on the Consent to Entry of Order attached hereto.

FINDINGS OF FACT

The Director **FINDS** that:

Section One: Relevant Parties

1. Respondent **ALPHA TELCOM, INC** was, at all times material herein, a for profit corporation organized under the laws of the State of Oregon. Alpha Telcom offered investments in its pay telephone program to members of the public. Alpha Telcom's last known business address is 2751 Highland Avenue, Grants Pass, Oregon 97526.

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2. Respondent **CHARLES TUMMINO** was, at all times material herein, a Director of Sales and sales agent for Alpha Telcom. Tummino's last known business address is P.O. Box 1440, Rogue River, Oregon 97537.

3. Respondent **CHRIS CLAPP** was, at all times material herein, a General Manager and sales agent for Alpha Telcom. Clapp's last known business address is 2751 Highland Avenue, Grants Pass, Oregon 97526.

4. Respondent **JULIE BLAIR FINGERSON** was, at all times material herein, a sales agent for Alpha Telcom through her role as owner/manager of its sales subsidiary, ATC Inc. Her last known business address is 620 SW 4th Street, Grants Pass, Oregon 97526.

5. Respondent **PAUL FARVER** was, at all times material herein, a sales agent for Alpha Telcom. His last known business address is 35354 Tennessee Road, Albany, Oregon 97321.

6. Respondent **MELINDA FARVER** was, at all times material herein, a sales agent for Alpha Telcom. Her last known business address is 35354 Tennessee Road, Albany, Oregon 97321.

7. Respondent **JANNA RAMELLI** was, at all times material herein, a sales agent for Alpha Telcom. Her last known business address is P.O. Box 2123, Grants Pass, Oregon 97528.

8. Respondent **DAVID RAMELLI** was, at all times material herein, a sales agent for Alpha Telcom. His last known business address is 908 Hewitt Lane, Grants Pass, Oregon 97526.

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9. Respondent **ALPHA TELCOM**, Inc has not, at all times material herein, been licensed as a broker-dealer in this State, nor has its pay telephone investment program ever been registered as a securities offering with the Oregon Division of Finance and Corporate Securities.

10. Respondent **TUMMINO** (CRD#1743315) was not, at all times material herein, a licensed broker-dealer salesperson in this State. From 1987 to 1992 Tummino possessed a limited license to sell securities, permitting him to lawfully sell some types of securities, such as mutual funds, but not other types of securities, including investment contracts, notes, and instruments evidencing indebtedness. Tummino has been the subject of an Order to Cease and Desist instituted by the Oregon Division of Finance and Corporate Securities (Case No. 0-92-0020, *In the Matter of Charles F Tummino and Securities America, Inc.*)

11. Respondent **CLAPP** was not, at all times material herein, a licensed broker-dealer salesperson in this State. Clapp has never held a securities license in Oregon.

12. Respondent **BLAIR FINGERSON** was not, at all times material herein, a licensed broker-dealer salesperson in this State. Blair Fingerson has never held a securities license in Oregon.

13. Respondent **PAUL FARVER** (CRD #2688229) was not, at all times material herein, a licensed broker-dealer salesperson in this State. Paul Farver does have a limited license to sell securities in the State of Oregon, permitting him to lawfully sell some types of securities, such as mutual funds, but not other types of securities, including investment contracts, notes, and instruments evidencing indebtedness.

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14. Respondent **MELINDA FARVER** was not, at all times material herein, a licensed broker-dealer salesperson in this State. Melinda Farver has never held a securities license in the State of Oregon.

15. Respondent **JANNA RAMELLI** (CRD#2760258) was, at all times material herein, a licensed broker-dealer salesperson, authorized to sell all securities products in Oregon.

16. Respondent **DAVID RAMELLI** was not, at all times material herein, a licensed broker-dealer salesperson in this State. David Ramelli has never held a securities license in the State of Oregon.

Section Two: Alpha Telcom, Inc

17. Respondent **ALPHA TELCOM**, Inc was formed in 1986 by Paul Rubera and several associates for the purpose of selling, installing, and maintaining phones and business systems in the Grants Pass, Oregon area. Over the next decade Alpha Telcom branched into pay phones, eventually owning and operating approximately one thousand eight hundred (1,800) phones for its own account in southern Oregon and northern California.

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Telephone: (503) 378-4387

18. By 1997 Rubera had purchased the interests of all other equity holders of **ALPHA TELCOM**, Inc, and became the sole shareholder of the company. He was to remain the sole shareholder of Alpha Telcom until it filed for bankruptcy protection.

19. In 1997 Respondent **TUMMINO** suggested to Rubera that Alpha Telcom sell payphones to individual members of the public and then "manage" (lease back) the same payphones on their behalf. As the concept developed, Alpha Telcom "sold" a (usually used,

refurbished, or already placed in the field) payphone to its sales subsidiary, ATC, which then "sold" the same phone to a member of the public at a highly inflated price ($4,000-$5,000 per phone), at which point the investor would "lease" the same phone back to Alpha Telcom in return for a monthly lease payment of a minimum of $58.34, a sum that amounts to a 14% annual return. As part of the lease (Alpha Telcom called it a "service agreement") Alpha Telcom obligated itself to repurchase the payphone from the investor *at the original purchase price* at the conclusion of the (usually three year) contract, or a slightly lesser amount prior to that point (87.5% during months one through six of the service agreement, 92.5% during months seven to twelve of the service agreement, 95% during months thirteen through twenty four of the service agreement, and 97.5% during months twenty five through thirty six of the service agreement).

20. From 1997 through 2001 **ALPHA TELCOM** raised more than one hundred thirty five million dollars ($135,000,000.00) from over seven thousand (7,000) investors nationwide by peddling this investment program (this number includes at least seventy seven (77) payphones sold to forty eight (48) Oregonians). At one time, Alpha Telcom claimed to "manage" eighteen thousand two hundred (18,200) pay telephones "owned" by investors.

21. **TUMMINO** was under contract by **ALPHA TELCOM** from 1997 through 1998 as Director of Sales. Tummino drafted many of the original sales documents, recruited many of the original sales agents, and crafted many of the elements of what became known as the Alpha Telcom program. He retired in mid 1998, and as part of his severance package negotiated an arrangement whereby he would receive compensation in the form of one percent (1%) of future gross sales in any month in which sales exceeded two million dollars ($2,000,000.00), with a minimum payment of twenty thousand dollars ($20,000.00) per month.

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Section Three: ATC

22. Prior to departing **ALPHA TELCOM, TUMMINO** participated in the creation of a sales subsidiary known as ATC, Inc. ATC, Inc was a wholly owned subsidiary of Alpha Telcom incorporated on October 25, 1998. ATC took over full responsibility for the process of selling Alpha Telcom payphone programs to members of the public, including the development and management of a nationwide sales force, the creation and distribution of sales materials, and customer service related chores such as administration of the voluminous paperwork that accompanied thousands of sales.

23. While ATC purported to change ownership several times, as a matter of practical economic reality it was always controlled and operated by Paul Rubera and **ALPHA TELCOM**. ATC was a legal subsidiary of Alpha Telcom from its founding in October, 1998 until July, 2000, when it was "spun off" as an independent entity owned by Paul Rubera. In September 2000, Rubera "sold" ATC (it also operated using the moniker "American Telecommunications Company") for $100 to his then administrative assistant, Respondent **BLAIR FINGERSON**, who then sold it back to him for $100 in early April, 2001. In late April, 2001, Rubera sold ATC to another Alpha Telcom employee, Robert A McDonald, in exchange for a $20,000 note to be paid at the rate of $113.00 per month (in point of fact, no payments were ever made by McDonald or demanded by Rubera). In August, 2001 Rubera "repurchased" ATC from McDonald.

24. **ALPHA TELCOM** and ATC operated as two divisions of a single company. ATC conducted no business with any entity other than Alpha Telcom. ATC never actually took physical possession of a payphone it sold to a member of the public: the phone stayed in Alpha Telcom's control throughout. Funds that ATC received from members of the public for

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Telephone: (503) 378-4387

payphone sales were available and often transferred directly to Alpha Telcom at Paul Rubera's direction. At the time of its bankruptcy filing Alpha Telcom had "borrowed" over nine million dollars ($9,000,000.00+) from ATC, accumulated in monthly "loans" that were directly proportionate to Alpha Telcom's funding needs at any given point in time.

Section Four: Alpha Telcom Payphone Program

25. The Alpha Telcom Payphone program consisted of the purchase of a $5,000 pay telephone by an investor (pre-March 1, 1999 sales were at $4,000 per unit) concurrent with that same investor's entry into a "service agreement" (leaseback) whereby Alpha Telcom was to "manage" the phone on the investor's behalf in exchange for a monthly payment. *The two agreements were presented and promoted simultaneously as part of a single package.*

26. While investors were told they had the choice of operating their own payphone, one hundred percent of Oregon investors picked Alpha Telcom to manage their phones for them. Although investors were theoretically given four "service options", as a matter of economic reality only one choice was feasible. Most investors did not have the experience or knowledge necessary to operate and maintain a payphone themselves, so they selected the service option that required Alpha to perform all necessary duties ("Level Four"). Alpha Telcom selected the location of the phone, installed the phone, obtained all certifications from regulatory bodies, maintained and cleaned the phone, paid all monthly telephone and utility bills, and collected coin revenue. The investor never performed a single task.

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Salem, OR 97301-3881
Telephone: (503) 378-4387

27. Service option levels one, two, and three required the investor to forward varying fees <u>to</u> Alpha Telcom each month for specific services. Under "level one" an investor would pay Alpha Telcom forty dollars ($40.00) each month in exchange for which Alpha Telcom collected

all coin revenues from a phone and forwarded it to the investor. Under "level two" an investor would pay Alpha Telcom fifty dollars ($50.00) each month in exchange for which Alpha Telcom collected all coin revenues from a phone, forwarded the funds to the investor, and maintained the payphone in a neat and clean condition. Under "level three" an investor would pay Alpha Telcom eighty dollars ($80.00) each month in exchange for which Alpha Telcom collected all coin revenue from a phone, forwarded the funds to the investor, maintained the payphone in a neat and clean condition, provided for the repair of the equipment, obtained and renewed all public utility permits, and made all capital improvements as necessary. Under these three options, Alpha would forward 100% of <u>actual</u> pay revenues to the investor. Since investors in the Alpha Telcom payphone program wanted to garner monthly income <u>from</u> the company at a <u>precise</u> rate, and not forward additional funds to the company each month in return for an <u>uncertain</u> return, none of the Oregon investors (and only a handful of the nationwide investor base) chose any of these three options.

28. Each month "Level Four" investors were to receive thirty percent of the net revenue (defined by the company as gross coin revenues minus the actual cost for local and long distance service incurred and minus so called "dial around" revenue emanating from toll free calls) from their phone, while Alpha Telcom was to receive seventy percent of a phone's revenues as its management fee. However, if revenues from a payphone did not generate a so called "base amount" of $58.34 in any given month (the amount was calculated by dividing a fourteen percent annual return on a $5,000 investment into twelve monthly increments), Alpha agreed to waive a portion of its seventy percent fee and pay that monthly base amount payment in full. If Alpha waived its entire fee and the base amount still was not met, Alpha made up the difference anyway. Indeed, Alpha created a computer program that automatically paid each investor the base amount each month, *regardless of whether the investor's particular phone generated*

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Telephone: (503) 378-4387

enough revenue to pay that amount.

29. The "Level Four" service option allowed investors to sell the phones back to Alpha's sales subsidiary, ATC, *at the original purchase price*. This was commonly referred to as the "buyback" provision, and was proffered to give investors in the payphone program the illusion of liquidity similar to that of a certificate of deposit or other time instrument. (Beginning sometime after May 2000, investors were also given the option of purchasing buyback "insurance" from companies alternately referred to as belonging to "Lloyd's of London" or rated AA+ by an insurance rating service. The insurance would purportedly cover the investor's purchase price if for any reason the company became unable to repurchase the phones. In point of fact, the insurance policy, underwritten by an agency that was partially owned by Alpha Telcom's Paul Rubera and improperly procured, never resulted in the payment of any claims to investors.)

Section Five: The Alpha Telcom Sales Process

30. As noted above, Respondent **TUMMINO** was initially in charge of **ALPHA TELCOM**'s marketing and sales efforts. This individual retained and managed a small sales force of insurance agents to solicit investors in the program. He created the marketing materials employed by sales agents, the sales agreement that Alpha Telcom investors would execute when "purchasing" their phone, and the Alpha Telcom service agreement that would concurrently authorize Alpha Telcom to "manage" the investor's phone on their behalf. Tummino retired at the end of 1998.

31. Commencing in January, 1999 Alpha Telcom contracted out the management and continued development of its sales force to two independent insurance agents, Ross Rambach and Mark Kennison. Rambach and Kennison operated under the business names "Strategic

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350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

Partnership Alliance" and/or "Strategic Partnership Marketing ." Strategic Partnership Alliance significantly modified many of the sales materials that were initially prepared by Tummino. (This was to be the first of many rounds of changes to either sales materials or details of the program. As such, while there are many common elements, there is not one single uniform Alpha Telcom program. For example, "service agreements" varied in length from three to ten years.) Rambach and Kennison placed heavy emphasis on expanding the sales force. At its height, Strategic Partnership Alliance managed one thousand seven hundred (1,700) Alpha Telcom sales agents nationwide, of whom almost all were independent insurance agents.

32. Sales agents were compensated exclusively through commissions, receiving a percentage (between 10-14%) of each sale as their remuneration. Sales agents received a manual that purported to govern all aspects of their roles as sales agents, including sales scripts and charts they were to employ. The agents received no formal classroom training or continuing education.

33. The Alpha Telcom sales agent would typically begin the sales process by contacting their insurance clients that were in or near retirement (the type of client that would likely have a substantial percentage of their assets in certificates of deposit or other cash equivalents) and ask them if they would like to get a higher return than banks offered while maintaining the safety of their money. Once clients answered in the affirmative, the agent asked to meet with the prospective investor in their home to discuss the program, sometimes not even mentioning at this point that the program involved the sale and subsequent leaseback of payphones.

34. Once at the face to face meeting, sales agents informed prospective investors that Alpha Telcom offered an attractive program involving pay telephones. Using a series of charts provided by Alpha Telcom, the agents described the essentials of the program: that the investor

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Salem, OR 97301-3881
Telephone: (503) 378-4387

was to purchase a pay telephone for $5,000 per unit; that the investor will receive a monthly payment of at least $58.34, which works out to an annual return on their investment of 14%; that the program is low risk, safe, and conservative; that at the conclusion of the contract term Alpha Telcom will repurchase the payphone at the original purchase price, and will even repurchase it before the conclusion of the contract at the original purchase price minus certain fees; that Alpha Telcom is a very safe and profitable company; that (post January 1, 2000) there is a special two million dollar ($2,000,000) "sinking fund" to ensure that moneys will be available for "buy backs"; that phone purchases qualify the investor for special tax credits because the payphones are equipped for handicapped access, etc. A single Alpha Telcom sales chart (chart six) summarizes all essential program elements as follows: " $5,000 per pay phone cost, typically 14% or higher annual return, strong monthly income, excellent buy back option, phones qualify for tax credits under The Americans With Disabilities Act of 1990, equipment depreciation, usually 5 or 7 years straight line, no stock market risk."

35. At the conclusion of the sales agent's presentation, written materials including, but not always limited to, a brochure describing the Alpha Telcom program, a Telephone Equipment Purchase Agreement, and a Telephone Service Agreement were provided to prospective investors. Several different versions of the materials were employed at various times, yet all are filled with "happy talk." The brochure represents among other things, that the payphone industry is "highly profitable", that payphone investments are "virtually recession proof" and that payphone investments "offer steady, immediate cash flow." The brochure also contains a purported quote from the Cincinnati Post noting that "[a]n average of 500 to 800 calls are made on a payphone per month, according to AT & T" and a purported quote from USA Today asserting that "there are millions to be made from owning payphones." In a "Performance Comparison" with bank certificates of deposit, the brochure claims that with regard to the investment's "safety", it is "asset backed." Finally, the brochure asserts that "opportunity

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Telephone: (503) 378-4387

doesn't always knock... sometimes it rings!"

36. At or about the time of the events in question, the entire pay telephone industry was facing monumental challenges that were rapidly reducing revenues. New technology was largely to blame for the industry's demise: heavy usage of cellular telephone technology, facsimiles, e-mails, and "calling cards" were causing income to drop as much as fifty percent per annum. None of the Respondents ever disclosed any of this information to potential investors. Quite the contrary: while industry experts openly discussed the seemingly insurmountable problem the payphone industry was facing, Respondents presented a glowing picture of the industry in oral and written comments. As instructed, sales agents focused on the fourteen percent return and the purported "safety" of the program as its primary selling points. The sales pitch focused exclusively on the supposed benefits of the investment, and made no mention of lurking difficulties. In short, the agents would talk about anything and everything but *the risks of this program* and *the true state of the payphone industry.*

37. Never considering suitability or asset allocation issues, a significant number of Alpha Telcom agents attempted to sell prospective investors as many phones as possible. Some investors placed their entire life savings into this program.

38. Respondent **TUMMINO** directly participated in the sale of the Alpha Telcom program to fourteen (14) investors in the State of Oregon for a total investment of at least fifty six thousand dollars ($56,000). (**TUMMINO**, as Director of Sales, participated indirectly in thousands of sales nationwide. Furthermore, **TUMMINO** received a percentage of each sale made nationwide after his retirement.)

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Telephone: (503) 378-4387

39. Respondent **CLAPP** directly participated in the sale of the Alpha Telcom program to two (2) investors in or from the State of Oregon that purchased a total of two (2) phones for a total investment of ten thousand dollars ($10,000).

40. Respondent **PAUL FARVER** directly participated in the sale of the Alpha Telcom program to five (5) investors in or from the State of Oregon that purchased eight (8) phones for a total investment of forty thousand dollars ($40,000).

41. Respondent **MELINDA FARVER** directly participated in the sale of the Alpha Telcom program to nineteen (19) investors or from the State of Oregon that purchased thirty eight (38) phones for a total investment of one hundred sixty nine thousand dollars ($169,000).

42. Respondent **JANNA RAMELLI** directly participated in the sale of the Alpha Telcom program to at least four (4) investors in or from the State of Oregon for a total of eight (8) sales for a total investment of thirty two thousand dollars ($32,000).

43. Respondent **DAVID RAMELLI** directly participated in the sale of the Alpha Telcom program to four (4) investors in or from the State of Oregon for a total of seven (7) sales for a total investment of thirty thousand dollars ($30,000).

Division of Finance and Corporate Securities
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Telephone: (503) 378-4387

Section Seven: Payphone Operations

44. Once the investor's two signed contracts (purchase and service) and check were received by ATC it transmitted a Purchase Order to Alpha Telcom which then, within ninety days, assigned a specific payphone to the investor (the investor had no say in where their phone would be located). At that point, the investor would begin receiving monthly payments, usually

via an electronic funds transfer (EFT) directly to their bank account.

45. Alpha Telcom's payphone sales grew quickly (at one point in time it was averaging over one thousand two hundred (1,200) sales per month). In fact, the company's sales pace was so accelerated that it ranked #189 on the 2000 *Inc 500* list, proof that it was one of the fastest growing private companies in the United States.

46. To quench its demand for locations on which payphones could be placed into the stream of commerce (sites), Alpha Telcom purchased entire routes (a route is a series of already placed payphones) and in some instances entire regional phone companies yet still found itself in dire need of sites on which to place so many payphones.

47. Alpha Telcom contracted with an affiliate of Strategic Partnership Alliance, ATMN/EMI, to acquire phone sites for Alpha Telcom's use. Eventually, Alpha Telcom discovered that many of the sites ATMN/EMI found were in locations not suitable for pay telephones, such as burned out buildings. In some instances, the purported location did not even exist. Alpha Telcom terminated its relationship with ATMN/EMI in December, 2000 with the problem of finding an ample supply of payphone sites unresolved.

48. As time passed, Alpha Telcom's sales agents were encouraging their existing Alpha Telcom clients to exercise the "buyback" option for one of two reasons: first, the agent would "repurchase" the Alpha Telcom program (allowing the agent to receive an additional commission) or, second and more likely, invest proceeds in another type of commission producing investment. While Alpha Telcom sales agents were sharing these types of strategies with each other, the media carried news of the demise of other similarly structured programs (ETS Payphones, Phoenix Telecom, etc). As such, what began as a trickle of buyback requests

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turned into an avalanche, with between 300-500 investors demanding their funds each month. The company wasn't selling enough phone programs (since income from operations [coin revenue] was insufficient to even meet fixed costs, new phone program sales were the only possible source of funds to satisfy "buybacks") to repurchase phones as promised.

49. Investors in the Alpha Telcom payphone program were not paid in accordance with the revenue generated from each particular payphone. To meet the payment obligations Alpha Telcom had created for itself by assuring investors that full "base amount" payments would be made each month, it "borrowed" over nine million dollars ($9,000,000+) from ATC. ATC's only source of revenue was money from new investors. Contrary to representations of Alpha Telcom and its agents as to the profitability and safety of the payphone investment program, since at least January, 2000 Alpha Telcom's revenues from payphones were substantially exceeded by the monthly payments it made to investors. *In summary, Alpha Telcom was operating a Ponzi like scheme whereby existing investor's monthly "returns" were being paid from monies received from new investors, rather than from payphone revenues.*

50. Alpha Telcom did not honor buy back requests from March, 2001 on because they were financially unable to do so. Earlier in the payphone program's history, when buybacks were rare, they were accomplished within thirty days. As buyback requests rose with the passage of time, new rules, such as a ninety day "notice" requirement, were imposed in an effort to forestall the flood of requests, all to no avail. As for monthly "base amount" payments, they stopped entirely in May, 2001.

Section Eight: Financial Realities and Ultimate Results

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51. For the twelve months ending December 31, 2001 Alpha Telcom lost $583,793.24 from its payphone operations. Alpha Telcom lost money in seven of the twelve months of 2001, and never showed a profit from its payphone operations large enough to enable it to make the $11,056,197.48 in payments that it made to payphone owners from coin revenues.

52. For the five months from January through May, 2002, Alpha Telcom lost $1,185,197.59 from its operations of payphones. Alpha lost money in each of these five months of 2001, and thus was unable to make the $5,722,868.37 in payments that it made to payphone owners from coin revenues. Alpha Telcom paid a total of $16,779,065.85 to payphone owners for these months, notwithstanding the fact that the company experienced a loss of $1,513,930.70 from operating payphones during this same period.

53. From July 1, 1998 through June 30, 2001, Alpha's payphone program failed to generate revenue sufficient to cover the cost of phone operations. Notwithstanding this fact, Alpha Telcom paid investors approximately $17, 900,000 in returns.

54. In August, 2001 the United States Securities and Exchange Commission brought an action alleging violations of federal securities laws by, among others, Alpha Telcom, Paul Rubera, Ross Rambach, and Mark Kennison in the United States District Court for the District of Oregon (Case No CV01-1283PA). Judge Owen Panner issued a Temporary Restraining Order halting further sales shortly after the complaint was filed, and issued a final Judgment and Permanent Restraining Order against the company in February, 2002. The Court found that Alpha Telcom had engaged in the unregistered sales of securities in violation of federal law.

Section Nine: Misrepresentations and Omissions

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Telephone: (503) 378-4387

55. The securities offered by Respondent **CHARLES TUMMINO** were not registered with the Oregon Division of Finance and Corporate Securities. Furthermore, Respondent **CHARLES TUMMINO** was not licensed to sell this particular type of security by the Oregon Division of Finance and Corporate Securities.

56. Respondent **CHARLES TUMMINO,** in connection with the offer and/or sale of investments in the Alpha Telcom payphone program made the following *misrepresentations* and/or *omissions* of material fact: that the Alpha Telcom program was not registered as a security with the Oregon Division of Finance and Corporate Securities; that Charles Tummino was not licensed to sell this type of security in the State of Oregon; that the Alpha Telcom program was a "safe" investment, comparable to that of a bank certificate of deposit; that Alpha Telcom was operating at a profit; that investors would receive a guaranteed or contractually assured 14% annual return throughout the length of their contract; that an investment in the Alpha Telcom program was, given the state of the company and the industry, highly speculative and that such an investment would not be appropriate for investors that were in or nearing retirement; that coin revenues from payphones were never sufficient to cover the monthly "base amount" payment to investors, and that investors could only receive monthly payments so long as a sufficient number of new investors participated in the Alpha Telcom program; that coin revenues from payphones were never sufficient to cover the number of possible buyback requests, and that investors could only receive their original purchase price so long as a sufficient number of new investors participated in the Alpha Telcom program; a disclosure of the true backgrounds and management histories of the officers of Alpha Telcom; a detailed, specific description of the financial condition of Alpha Telcom, such that a prospective investor would be able to determine the ability of Alpha Telcom to make monthly payments and/or buy back their investment at or before the conclusion of the service contract; a disclosure of the true risks of this investment,

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including the fact that payphone industry revenues were rapidly falling due to the prevalence of competition from other technologies.

CONCLUSIONS OF LAW

The Director **CONCLUDES** that:

57. The investments in the Alpha Telcom pay telephone program which were offered and sold by Respondent **CHARLES TUMMINO** are a "security" as defined in ORS 59.015(19)(a).

58. Respondent **CHARLES TUMMINO**, either directly or by materially participating and/or aiding or abetting offered and/or sold unregistered securities in the State of Oregon in violation of ORS 59.055.

59. Respondent **CHARLES TUMMINO** offered and/or sold a security in the State of Oregon without being licensed as a broker-dealer or broker-dealer salesperson in violation of ORS 59.165(1).

60. Respondent **CHARLES TUMMINO**, in connection with the offer and/or sale of investments in the Alpha Telcom payphone program made the following *misrepresentations* and/or *omissions* of material fact: that the Alpha Telcom program was not registered as a security with the Oregon Division of Finance and Corporate Securities; that Charles Tummino was not licensed to sell this type of security in the State of Oregon; that the Alpha Telcom program was a "safe" investment, comparable to that of a bank certificate of deposit; that Alpha Telcom was operating at a profit; that investors would receive a guaranteed or contractually assured 14% annual return throughout the length of their contract; that an investment in the Alpha Telcom

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Labor and Industries Building
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Salem, OR 97301-3881
Telephone: (503) 378-4387

program was, given the state of the company and the industry, highly speculative and that such an investment would not be appropriate for investors that were in or nearing retirement; that coin revenues from payphones were never sufficient to cover the monthly "base amount" payment to investors, and that investors could only receive monthly payments so long as a sufficient number of new investors participated in the Alpha Telcom program; that coin revenues from payphones were never sufficient to cover the number of possible buyback requests, and that investors could only receive their original purchase price so long as a sufficient number of new investors participated in the Alpha Telcom program; a disclosure of the true backgrounds and management histories of the officers of Alpha Telcom; a detailed, specific description of the financial condition of Alpha Telcom such that a prospective investor would be able to determine the ability of Alpha Telcom to make monthly payments and/or buy back their investment at or before the conclusion of the service contract; a disclosure of the true risks of this investment, including the fact that payphone industry revenues were rapidly falling due to the prevalence of competition from other technologies, all of which are untrue statements of a material fact and/or omissions to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading in violation of ORS 59.135(2).

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ORDER

Therefore, the Director **ORDERS**

61. That Respondent **CHARLES TUMMINO** shall cease and desist from offering and/or selling securities to per sons in the State of Oregon in violation of ORS Chapter 59, OAR Chapter 441, or the Oregon securities law.

62. That Respondent **CHARLES TUMMINO** is ordered to pay the sum of **ONE HUNDRED THOUSAND DOLLARS** ($100,000.00) as a civil penalty for violations of ORS 59.055, ORS 59.135, and ORS 59.165 described herein.

63. That Respondent **CHARLES TUMMINO** is hereby denied use of any exemptions authorized by ORS and ORS 59.035, until further order of the Director, pursuant to ORS 59.045.

64. That Respondent **CHARLES TUMMINO** is prohibited from applying for an Oregon securities license for a period of ten years.

IT IS SO ORDERED.

Dated this 14th day of June, 2004 NUNC PRO TUNC November 12, 2003 at Salem, Oregon.

CORY STREISINGER, DIRECTOR
DEPARTMENT OF CONSUMER & BUSINESS SERVICES
STATE OF OREGON

Division of Finance and Corporate Securities
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CONSENT TO ENTRY OF ORDER

I, **CHARLES TUMMINO**, state that I am a resident of the State of Oregon, that I have read the foregoing Order and that I know and fully understand the contents thereof; that I have been advised of my right to a hearing; that I have been represented by counsel of my choosing in this matter; that I voluntarily consent to the entry of this Order without any force or duress, expressly waiving any right to a hearing in this matter; that I understand that the Director reserves the right to take further actions against me to enforce this Order or to take appropriate action upon discovery of other violations of the Oregon Securities Law by me; that I will fully comply with the terms and conditions stated herein and will not engage in the activities of a broker-dealer, investment adviser, or mortgage broker, or act as a salesperson for any of these unless such activities are in full compliance with Chapter 59 of the Oregon Revised Statutes; that as of the date of this Consent to Entry of Order I am 66 years of age, have been unemployed since 2000, and own no real property; that I affirm that the assertions stated herein are true and correct; that understand that this Consent Order is a public document.

Dated this 14 day of May, 2004.

CHARLES TUMMINO

SUBSCRIBED AND SWORN to before me this 14th day of May, 2004.

Dixie L Netherland

Notary Public
for the State of: Oregon
My commission expires: 2/22/2008

OFFICIAL SEAL
DIXIE L NETHERLAND
NOTARY PUBLIC – OREGON
COMMISSION NO. 377548
MY COMMISSION EXPIRES FEBRUARY 22, 2008

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