

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
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INDIANAPOLIS, INDIANA 46204-3419

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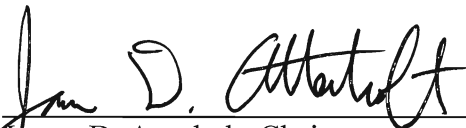
IN THE MATTER OF THE INDIANA)
UTILITY REGULATORY COMMISSION'S)
INVESTIGATION OF TERRACOM, INC.) CAUSE NO. 44332
AND ITS COMPLIANCE WITH THE)
ORDERS OF THIS COMMISSION)

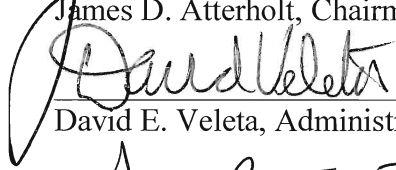
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INDIANA UTILITY
REGULATORY COMMISSION

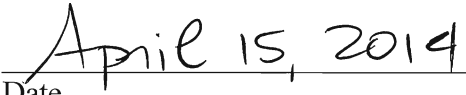
You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") has caused the following Entry to be made:

Please be advised that on April 9, 2014, the Commissioners received an email with attachments from Mr. Gary Clowers that addresses matters currently pending in this proceeding. The email with attachments is attached to this Docket Entry. Disclosure of this written communication is being tendered to the record pursuant to 170 IAC 1-1.5-6.

IT IS SO ORDERED.



James D. Atterholt, Chairman


David E. Veleta, Administrative Law Judge


Date

Ziegner, David

From: gary@clowerscommunications.com
Sent: Wednesday, April 09, 2014 8:46 AM
To: llandis@urc.in.gov; Mays, Carolene; Ziegner, David; b.anthony@occemail.com; d.murphy@occemail.com; p.douglas@occemail.com; LifelineTips@fcc.gov
Subject: Indiana Public Utility Commission w/ Supporting Documents
Attachments: KennethMuhammadAffidavit.pdf; Motion To Response For Stay.pdf; RickWarren Affidavit.pdf
Importance: High

Good morning Commissioners,

I wanted to provide you all with current developments in our lawsuit against TerraCom/YourTel/SkyCom in hopes that this information will be of some use to you all in your investigation. On 3/31/2014 the attorney, Nikki G. Shoultz and Bose McKinney for TerraCom submitted an Affidavit of Rick Warren titled "Response To Ex Parte Communication"

I am submitting the following attachments for your examination to determine whether the attorneys submitted this response with the intentions to mislead and misrepresent the facts of matter. Also to determine whether attorney Rick Warren, perjured himself in this sworn affidavit. I humbly ask the commissioners to impose any and all necessary and applicable penalties and sanctions if it determines these attorneys knowingly, willfully, and intentionally submitted inaccurate information with the intention to mislead and committed direct misrepresentation. Question: What other information they have submitted to you all that could be untruthful or submitted with the intention to mislead?

Sincerely,

Gary Clowers Sr

Good afternoon commissioners,

Just wanted to provide you all with follow up information concerning TerraCom's response the use of my complaint as relevant information to the current proceedings. To clarify my position, I simply want to apprise the commissioners of the practices of TerraCom as it relates to its agent network, specifically my company. As we believe they used the as a scapegoat and as justification to shutdown the agent network. As you can see from the correspondence, my company was clearly, in their own words, "fully committed to compliance". Perhaps there maybe information contained in my email correspondence that may be of use to you all in regards to your investigation related to testimony, documents, etc... It is my desire to see that TerraCom is held fully accountable for its actions and the good name of those who worked for TerraCom as agents are cleared, specifically Clowers Communications, LLC.

The information I submitted is very clear and concise without any ambiguity. Additionally, they have alleged in their response to have filed a lawsuit against my company. After confirming with my attorney, Mr. Kenneth Muhammad, we have never been notified or served concerning a lawsuit. What we do know based upon their response is that if they filed a lawsuit its frivolous, without base, and filed because they knew we were filing. How can they alledge, Clowers Communications, LLC breached contract when they cancelled the contract? What you have here based upon the date

they gave is an effort to file "something first" before we filed our lawsuit. Please review the below timeline and attachments.

On 1/22/2014 Attorney Kenneth Muhammad forwarded Mr. Rick Warren, Attorney for Terracom 4 Series of Emails of which Mr. Warren confirmed receipt (See Attachments A, B, C, D, and E).

These emails contained drafts of the current pending lawsuit. The purpose of this was to make an effort to settle the matter out of court.

On 1/22/2014 Mr. Warren replied and requested an extension of time to review the information with his clients and to provide a response. My attorney agreed with the understanding that if an extension is provided, TerraCom would agree to enter into settlement negotiations in good faith with TerraCom agreeing to settle with a substantial payment to Clowers Communications, LLC for commissions owe. My attorney agreed.

On and between 1/27-31/2014 Attorney Kenneth Muhammad made several attempts to contact Mr. Warren; however, he was unavailable and failed to respond to accordingly.

On 1/31/2014 Clowers Communications, LLC filed its lawsuit in the Northern District of Georgia Federal Court. Additionally the defendants TerraCom, YourTel, and SkyCom have been served. (See Attachments F, G)

Again, if you don't hear both sides TerraCom would lead you all to believe, "They ARE All Good". To the contrary. We have simply asked them to Right the Wrong (Financially and Reputation Wise), and they have refused to do so. TerraCom wouldn't even write a letter of recommendation that would clear my company of compliance issue allegations. Further from the above timeline, its obvious why a lawsuit was filed by TerraCom against Clowers Communications, LLC if one was. Its an attempt to make themselves look good as it really wouldn't look good to have a distributor/agent file a lawsuit against them if they are supposed to be the "Right Ones".

Thanks for hearing our side!!!

Gary A. Clowers Sr.
Office: 770-845-6292

Fax: 866-590-3672
Website: www.lifelinedistributor.com

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CLOWERS COMMUNICATIONS, LLC	:	
a Georgia Limited Liability Company,	:	
	:	Case No.: 1 14-CV-0291-ODE
Plaintiff	:	
	:	
v.	:	
	:	
SKYCOM USA, LLC, an	:	
Oklahoma Limited Liability Company;	:	
TERRACOM, INC., an Oklahoma Corporation; and	:	
YOURTEL AMERICA, INC., a Missouri Corporation,	:	
	:	
Defendants.	:	

AFFIDAVIT OF ATTORNEY KENNETH MUHAMMAD

STATE OF GEORGIA
COUNTY OF FULTON

I, Kenneth Muhammad, after first being duly sworn by the undersigned officer authorized to administer oaths, state the following:

1. My name is Kenneth Muhammad. I am over the age of twenty-one. I am competent in every respect to make the assertions set forth in this affidavit. I have personal knowledge of the facts alleged herein, and I know them to be true and correct.
2. At all times relevant hereto, I have been the attorney representing Clowers Communications, LLC ("Clowers Communications") in its dispute with Skycom USA, LLC ("Skycom"), Terracom, Inc. ("Terracom"), and Yourtel America, Inc. ("Yourtel").
3. In the summer and fall of 2013, Skycom, Terracom, and Yourtel refused to pay money owed to Clowers Communications based upon the claim that Clowers Communications did not return 8,445 unused Terracom phones and 1386 unused Yourtel phones.

4. On September 5, 2013, I sent a spreadsheet to Rick Warren, counsel for Skycom, Terracom, and Yourtel, proving that phones that his client claimed were unreturned, were in fact, returned. The spreadsheet included UPS and Fedex tracking data for the shipment of the phones to Defendants.

5. Shortly thereafter, the parties stopped communicating with one another and there were no further settlement discussions for months.

6. On January 22, 2014, communications commenced once again when I sent 5 emails to Rick Warren. See Attached Exhibits B-1 through B-13. The first email contained a cover letter informing Rick Warren that we would be filing a Complaint in the Northern District of Georgia on January 23, 2014 at 3:00 p.m. unless Skycom, Terracom, and Yourtel acknowledged that they owe money to Clowers Communications, and they were prepared to enter into settlement negotiations. See Attached Exhibit B-1.

7. The second email contained a draft copy of the Complaint. See Attached Exhibit B-2.

8. The third email contained a draft letter prepared by Gary Clowers, owner of Clowers Communications, informing federal regulators of the true nature of the parties' dispute. See Attached Exhibit B-3.

9. The fourth and fifth emails contained documents proving that Skycom, Terracom, and Yourtel owe money to Clowers Communications, that fraud and deceit were used by Skycom, Terracom, and Yourtel to avoid making full payments to Clowers Communications, and that Clowers Communications returned disputed unused phones already. See Attached Exhibits B-4 and B-5.

10. The same day, January 22, 2014 at 5:04 p.m., Rick Warren replied with an email stating:

"I received all five of your emails. I am just now opening them as I am out of the office today with what I hope is only a 24 hour stomach virus. I just forwarded

these to my client a moment ago. I will let you know our position. Given the volume of data you sent today, a deadline of 3:00 pm tomorrow seems short and a bit unrealistic.”

See Attached Exhibit B-6.

11. At 5:56 p.m., I replied via email, stating: “I will see how long my client will provide and get back to you.” See Attached Exhibit B-7.

12. At 6:04 p.m., I sent another email, stating: “Friday 1pm is fine.” See Attached Exhibit B-8. This meant that Skycom, Terracom, and Yourtel were given an extension until Friday at 1:00 p.m., per Rick Warren’s request, to say that a) they acknowledged that they owed money to Clowers Communicaions, and b) they wanted to enter into good faith settlement negotiations to avoid the Northern District of Georgia Complaint that was forwarded to them from being filed on Friday, January 24, 2014.

13. At 6:10 p.m., Rick Warren replied via email, stating: “Thank you.” See Attached Exhibit B-9.

14. One hour and fifteen minutes before the deadline, on Friday, January 24, 2014 at 11:45 a.m., Rick Warren sent an email to me stating: “Kenneth, I just left you a voicemail. I wanted to discuss possible settlement arrangements with you so please call me at your convenience.” See Attached Exhibit B-10.

15. Shortly thereafter, I spoke to Rick Warren over the telephone and he accepted the conditions set forth in my January 22, 2014 correspondence. He stated that his client wanted to accept our offer to enter into good faith settlement discussions to avoid the filing of the Complaint that I sent to him, and that they acknowledged that money would be paid to my client. He said that they could not begin speculating the amount of the payment to Clowers Communications because Skycom, Terracom, and Yourtel may not be paid by the federal

government for activities in Arizona and possibly some other States. He said if the government's refusal to pay could be linked to Clowers Communications, they would want to offset the amount of the final payment. As a result, they wanted to begin settlement discussions, avoid the filing of the Northern District of Georgia Complaint, and figure out the exact amount to be paid to Clowers Communications when he returned from vacation (which he was leaving for the next week).

16. I spoke to my client, then called Rick Warren again. I told him that we would not file the Northern District of Georgia lawsuit at that time based upon his representations. However, my client did not want to wait a week or two for Mr. Warren to complete his vacation before settlement talks began. Rick Warren said that his clients had a team reviewing our documents and trying to assess a fair settlement amount and he was not sure how long they would take.

17. On Monday, January 27, 2014 and Tuesday, January 28, 2014, I made several telephone calls to Mr. Warren that were not returned. I made these calls to find out if Skycom, Terracom, and Yourtel were going to acknowledge that they amount that they owed to Clowers Communications was at or near the amounts that we believed Clowers Communications was owed.

18. On Tuesday, January 28, 2014 at 4:53 p.m., I sent an email to Rick Warren stating: "Rick, We are taking your client's silence as a negative response. If this is not correct, I need something to tell my client asap." See Attached Exhibit B-11.

19. An automatic reply email came from Rick Warren's email account stating: "I am out of the office and will return on Monday, Monday, February 3, 2014. If you need immediate assistance, contact my assistant, Cheryl McDaniel, at 405-235-7000." See Attached Exhibit B-12.

20. The next day, I spoke to Rick Warren on the telephone. He said that he was out of the office on vacation. He said that since my client did not want to wait for him to return from vacation before filing his lawsuit, they had no choice but to file a lawsuit in Oklahoma.

21. Rick Warren made it clear that the Oklahoma lawsuit was filed before Skycom, Terracom, or Yourtel reviewed Clowers Communications UPS and Fedex tracking numbers and documentation proving that the disputed unused wireless phones were returned. I later found out that the Oklahoma lawsuit also claims that Clowers Communications made a website disparaging Skycom, Terracom, and Yourtel, when neither Gary Clowers nor Clowers Communications have anything to do with any such websites.

22. When Rick Warren told me that he filed a lawsuit in Oklahoma, I was not provided a copy of the Oklahoma lawsuit.

23. I did not see any documentation associated with an Oklahoma lawsuit until the day that Skycom, Terracom, and Yourtel filed their Motion to Stay in this Court on March 21, 2014.

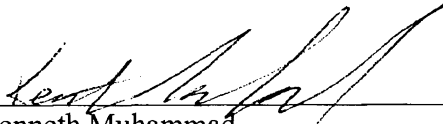
24. As of the time that the Motion to Stay was filed, my client was not served with any Oklahoma summons or complaint, and Oklahoma did not retain jurisdiction over my clients Gary Clowers or Clowers Communications.

25. Skycom, Terracom, and Yourtel have been served with the summons and complaint in the present Northern District of Georgia case.

26. The Oklahoma lawsuit filed by Skycom, Terracom, and Yourtel does not appear to contain any viable claims against Clowers Communications or Gary Clowers. My client returned phones that they claim are unreturned (and provided proof of delivery), and there is no evidence that I have seen that he has any connection with any websites concerning the Defendants. Skycom, Terracom, and Yourtel also accused my clients of tortiously interfering

with their business relationship with governmental agencies (the FCC, USAC, and IURC) by reporting conduct to said agencies. This claim does not appear to be viable as a matter of law or fact.

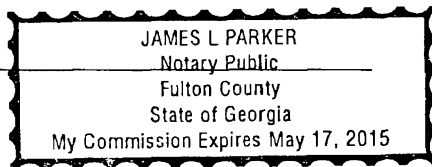
This 1st day of April, 2014.


Kenneth Muhammad

Sworn to and subscribed before me
This 1st day of April, 2014.



My Commission Expires:





"Kenneth Muhammad" <kennethmuhammad@gmx.com>

Subject: Clowers Communications - First of Series of Emails

From: Kenneth Muhammad

To: RWarren@HartzogLaw.com

Cc: kennethmuhammad@gmx.com

Bcc: gary@clowerscommunications.com

Date: 01/22/14 02:20 PM

Please see the attached cover letter.

Kenneth Muhammad
99 Peachtree Street SW
Suite 201
Atlanta, Georgia 30303
404-618-0910

EXHIBIT B-1

Kenneth W. Muhammad, Esq.

Attorney At Law

99 Peachtree Street SW
Atlanta, Georgia 30303

Telephone: 404-618-0910

Fax: 404-618-0910

Email: kennethmuhammad@gmx.com

January 22, 2014

Via Email: RWarren@HartzogLaw.com

Rick L. Warren

Hartzog Conger Cason & Neville

201 Robert S. Kerr Avenue

1600 Bank of Oklahoma Plaza

Oklahoma City, Oklahoma 73102-4216

RE: Clowers Communications, LLC v. Skycom USA, LLC, et. al.

Dear Mr. Warren:

This letter is being forwarded to you via an email-chain that should include a total of at least four (4) emails containing:

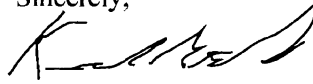
- 1) This cover letter;
- 2) A draft Complaint against Skycom, Terracom, and Yourtel America;
- 3) Attachment "A": A letter from Gary Clowers to the FCC and other regulators; and
- 4) Documents referenced in Gary Clowers' proposed letter.

As you are aware, we previously attempted to settle all claims between Clowers Communications and Skycom/Terracom/Yourtel America. We were not successful in prior negotiations. My client believes that it is in his best interest to file the proposed draft Complaint that you will receive shortly in federal court. Because both media outlets and federal and local regulators were cited by your clients as reasons that Clowers' Merchant Agreement was terminated, my client believes that it is in his best interest to inform all involved of his position regarding this dispute. Particularly since a cloud of suspicion has been left over his company, given Skycom/Terracom/Yourtel's stated reason for the termination: "agent networks".

All of this information is being provided to you in advance for two reasons. First, to give you an opportunity to inform me if you believe there are any specific facts alleged that you can immediately prove to be inaccurate. And second, to allow your client one last opportunity to consider settlement prior to initiation of legal, and other, action. Since we have previously attempted to settle this claim and your client was not prepared to negotiate any payment to Clowers Communications, we will only delay our filing of the Complaint if you acknowledge that your client is prepared to enter into good faith negotiations regarding a settlement in which Clowers is paid by Skycom/Terracom/Yourtel. We are not interested in discussing any settlement involving payments from Clowers to Skycom/Terracom/Yourtel, nor are we interested in discussing the receipt of nominal sums.

If your client would like to enter into negotiations as outlined, please inform me of their decision by 3:00 p.m. EST tomorrow, January 23, 2014. Otherwise, the Complaint will be filed tomorrow. I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kenneth Muhammad', written in a cursive style.

Kenneth Muhammad

cc: Gary Clowers



"Kenneth Muhammad" <kennethmuhammad@gmx.com>

Subject: Clowers COMPLAINT - Second of Series of Emails

From: Kenneth Muhammad

To: RWarren@HartzogLaw.com

Cc: Kenneth Muhammad

Bcc: gary@clowerscommunications.com

Date: 01/22/14 02:22 PM

Draft Complaint is attached.

Kenneth Muhammad
99 Peachtree Street SW
Suite 201
Atlanta, Georgia 30303
404-618-0910

EXHIBIT B-2

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA**

CLOWERS COMMUNICATIONS, LLC,)	Case No.:
Georgia Limited Liability Company,)	
)	COMPLAINT FOR:
Plaintiff,)	Breach of Contract,
)	Fraud, and Punitive Damages
v.)	
)	
SKYCOM USA, LLC, an)	
Oklahoma Limited Liability Company;)	
TERRACOM, INC., an)	
Oklahoma Corporation; and)	
YOURTEL AMERICA, INC., a)	JURY TRIAL DEMANDED
Missouri Corporation,)	
)	
Defendants.)	

COMPLAINT

Plaintiff, CLOWERS COMMUNICATIONS, LLC ("Clowers"), a Georgia Limited Liability Company, sues Defendants SKYCOM USA, LLC ("Skycom"), an Oklahoma Limited Liability Company, TERRACOM, INC. ("Terracom"), an Oklahoma Corporation, and YOURTEL AMERICA, INC. ("Yourtel"), a Missouri Corporation, and states:

PARTIES, JURISDICTION, AND VENUE

1. Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1332 because Clowers and Defendants are of diverse citizenship and the amount in controversy exceeds \$75,000, exclusive of interest, fees, and costs.

2. The Defendants are subject to the personal jurisdiction of this Court because the Defendants do business in the Northern District of Georgia, this case concerns a contract entered into with a Georgia limited liability company to be performed in whole or in part in the State of Georgia, and Defendants solicited business in the Northern District of Georgia in connection with said contract.

3. Venue is proper in the Northern District of Georgia because the impact of Defendants' misconduct occurred in this district, and this case concerns a contract entered into in the Northern District of Georgia, to be performed in whole or in part in the Northern District of Georgia.

4. This is an action for damages in excess of \$75,000, exclusive of interest, costs, and attorneys' fees.

5. Clowers is a Georgia limited liability company with its principal place of business in the Northern District of Georgia.

6. Skycom is an Oklahoma limited liability company, conducting business in the Northern District of Georgia, with its registered agent being Jeff White at 5708 NW 132, Oklahoma City, OK 73142.

7. Terracom is an Oklahoma corporation, conducting business in the Northern District of Georgia, with its registered agent being Len Cason at Hartzog Conger

Cason & Neville at 201 Robert S Kerr Avenue, 1600 Bank of Oklahoma Plaza, Oklahoma City, OK 73102.

8. Yourtel is a Missouri corporation, conducting business in the Northern District of Georgia, with its registered agent being the Corporation Company at 1833 South Morgan Road, Oklahoma City, OK 73128.

BACKGROUND

9. Lifeline is a program operated by the federal government through the Federal Communications Commission (“FCC”) that provides monthly discounts on telephone service to eligible low-income consumers. Lifeline is funded by the government through the Universal Service Fund. The program is administered by the Universal Service Administrative Company (“USAC”). However, the FCC retains responsibility for overseeing the program’s operations.

10. Lifeline support is paid to all telecommunications companies designated as eligible telecommunications carriers (“ETCs”). ETCs may permit eligible consumers to apply for discounts to wire or wireless phone service. The program pays \$9.25 per month per eligible consumer to the ETC providers.

11. To receive monthly support, an ETC must submit monthly support claims to the FCC.

12. Terracom and Yourtel are Lifeline phone service providers designated as ETCs. Terracom and Yourtel provide Lifeline phone services in various states throughout the country, offering low-income consumers low-priced phone service.

13. Skycom is a marketing agent for Terracom and Yourtel. At all times relevant hereto, Skycom conducted itself as an agent and representative of Terracom and Yourtel.

14. To expand their outreach to eligible low-income consumers in various states throughout the country, Terracom and Yourtel began entering into contracts with a network of smaller telecommunications companies throughout America. Plaintiff Clowers Communications, LLC is one such company.

THE MERCHANT AGREEMENT

15. On or about April 1, 2013, Skycom, on its own behalf and as agent and representative of Terracom and Yourtel, executed a contract with Clowers titled "Terracom-Yourtel America Merchant Agreement" (hereinafter the "Merchant Agreement"). A true and correct copy of the Merchant Agreement is attached hereto as Exhibit "A". Clowers executed the Merchant Agreement on March 25, 2013. The Merchant Agreement was a renewal of the parties' previous agreement, and it was the parties' intent that the terms of the Merchant Agreement operate retroactively from November 6, 2012 with regard to certain payments to Clowers.

16. Under the terms of the Merchant Agreement, Clowers was to submit orders (eligible low-income consumers) for Lifeline services to Terracom and Yourtel. Clowers also acted as a distributor of wireless phones provided by Terracom and Yourtel to said customers pursuant to the Lifeline program under the Merchant Agreement.

17. In exchange for this service, Clowers was to be compensated by Defendants by receiving: a) Commission Payment of \$7.50 for each customer whose phone is activated, and b) Residual Payment of \$0.50 per customer per month that the customer remains active, beginning on the fourth month that the customer remains active.

18. The Commission Payment was to be paid to Clowers “shortly after the 15th of the month for the first half of the month” and “at the beginning of each month for the last half of the previous month.”

19. The Residual Payments were to begin retroactively on November 6, 2012 and continue every month for the life of the customer as long as Clowers remained active and in good standing with Skycom.

20. Under the terms of the Merchant Agreement, any wireless phone that was not used or returned to Defendants would incur a chargeback cost against Clowers in the amount of \$35 per handset.

21. The Merchant Agreement contained a thirty-six month term, with 1-year annual renewals on the anniversary.

22. The Merchant Agreement allowed Defendants to terminate the agreement only if: a) the terms of the agreement were breached by Clowers and Clowers failed to cure within 7 days, b) Skycom's standing with the FCC, USAC, or local Public Utility Commission was threatened by one of Clowers' sub-agents, c) Terracom or Yourtel America no longer provided Lifeline services, or d) either Terracom or Yourtel America ceased to operate.

CLOWERS PERFORMANCE

23. Clowers performed as required under the Merchant Agreement, adding approximately 126,200 new customers for Defendants.

24. At all times relevant hereto, Clowers performed in accordance with applicable guidelines, laws, and regulations. Defendants expressly credited Clowers for its determination to keep its sub-agents in compliance with guidelines, laws, and regulations as well since Clowers swiftly corrected and/or terminated sub-agents as required for full compliance.

25. In April 2013, according to records relied upon by all parties, Clowers had 16,930 phones in inventory. Between April 2013 and June 2013, Clowers requested and received 43,454 additional phones before Defendants ceased

providing phones. The total number of phones in Clowers' possession from April 2013 through June 2013 was, therefore, 60,384.

26. During this same April 2013 to June 2013 timeframe, Clowers added approximately 60,000 new subscribers, and returned over 1000 phones to Defendants with proof of delivery.

**DEFENDANTS' MANIPULATION OF DATA
AND TERMINATION OF THE MERCHANT AGREEMENT**

27. On June 24, 2013, Clowers informed Defendants that Clowers was not being paid its full residual payments as required by the Merchant Agreement.

28. Defendants paid the residual payments late, and improperly changed data to give the appearance that less residual payments were owed than what was actually required.

29. On June 26, 2013, two days after Clowers began to complain about the shortfall in payments, Defendants stopped shipping phones to Clowers. The next day, June 27, 2013, correspondence was sent to Clowers announcing that Defendants discontinued its entire agent program and they are terminating all contracts with Lifeline agents. The correspondence terminated Clowers contract for the stated purpose that "it is apparent that recent media attention targeting compliance by agent networks could threaten Terracom and Yourtel's standing with the FCC and/or USAC with an immediate notice of such a change."

30. When questioned about Defendants' purpose for terminating the Merchant Agreement, Defendants' representatives indicated that Defendants did not have to terminate the agent program, but Terracom and Yourtel's Chief Operating Officer, Dale Schmick, wanted to "fly below the radar" due to the possibility that other internal issues could be discovered by regulators concerning Defendants' Oklahoma, Missouri, and Indiana subscriber base.

31. Defendants were under investigation by state and federal regulators at the time for security lapses that caused customers' personal data (names, social security numbers, etc.) to be at risk for theft. These investigations were wholly unrelated to Clowers, Clowers' sub-agents, and the Merchant Agreement.

32. Defendants never communicated any of the following to Clowers, and none of the following took place: a) Defendants did not communicate or allege that Clowers violated any portion of the Merchant Agreement, b) Defendants did not communicate or allege that any specific act was done by Clowers or any of Clowers' sub-agents which threatened (or potentially threatened) Defendants' standing with the FCC, USAC, or any local public utility commission, c) Defendants did not request that Clowers cure any breach or possible breach of the Merchant Agreement, and d) Defendants did not cease operating as Lifeline providers.

33. After the termination, Defendants forwarded to Clowers a fabricated inventory report on or about July 1, 2013 showing an outstanding inventory balance of 27,240 unreturned phones.

34. This new report directly contradicted all existing records and reports regarding Clowers' inventory.

35. Defendants have since refused to pay full and accurate residual payments owed to Clowers.

36. Defendants have not paid full and accurate commission payments owed to Clowers.

37. Defendants terminated Clowers' 3-year Merchant Agreement for reasons not permitted by the express terms of said agreement.

38. Defendants have publicly called into question the ethics and integrity of Clowers, without justification.

39. Defendants fabricated and/or manipulated data concerning the following: a) the number of active customers obtained by Clowers to reduce residual payments owed, b) the number of months for which payments were to be made to Clowers, and c) the number of phones unaccounted for or unreturned by Clowers.

40. Defendants also provided a false and completely fabricated justification for its termination of the Merchant Agreement to save money owed to Clowers and to

prevent regulators from discovering fraudulent book keeping practices and other activity.

COUNT I

BREACH OF CONTRACT

41. The Merchant Agreement was a valid and enforceable contract between Plaintiff and Defendants.
42. Skycom was a direct signatory and party to the Merchant Agreement on its own behalf and as agent and representative of Terracom and Yourtel.
43. Skycom, Terracom, and Yourtel benefited from the Merchant Agreement and performance of Clowers thereunder.
44. Clowers fully performed its obligations under the Merchant Agreement and remained, at all times, in full compliance therewith.
45. Defendants breached the terms of the Merchant Agreement by:
- a) terminating said agreement without valid cause,
 - b) terminating said agreement without offering Clowers an opportunity to cure any alleged or perceived violation,
 - c) failing to pay residual payments as owed, and
 - d) failing to pay commission payments as owed.

46. Defendants' breach of the Merchant Agreement set forth in Paragraph 45 above has caused Plaintiff to incur damages in an amount in excess of \$75,000 exclusive of interest, costs, and fees.

47. Plaintiff is entitled to interest and reasonable attorneys' fees and expenses of litigation associated with Defendants' breach of contract. Defendants have acted in bad faith, have been stubbornly litigious, and have caused Plaintiff unnecessary trouble and expense.

48. Plaintiff's claim of damages for breach of contract includes a claim for Plaintiff's expectation of commission and residual payments through the life of the 3-year Merchant Agreement. Plaintiff's damages so projected equal approximately Twelve Million Dollars (\$12,000,000).

COUNT II

FRAUD

49. Defendants made direct misrepresentations of fact to Plaintiff as follows:

- a) Defendants intentionally delayed by one month, on multiple occasions, its assessment of how many Clowers customers remained active and forwarded false numbers to Clowers to reduce Defendants' residual payment obligations.
- b) Defendants intentionally removed from accounting spreadsheets

whole months for which Clowers was owed payments from Defendants to reduce Defendant's payment obligation to Clowers.

- c) Defendants intentionally fabricated and manipulated data concerning the number of phones that were provided to Clowers that were not accounted for or returned. This false data was then transmitted to Clowers in an effort to reduce Defendants' payment obligation to Clowers.

- d) Defendants communicated to Clowers that it was terminated due to a direct threat to Defendants' standing with the FCC and/or USAC posed by agent networks when no such threat existed. It is believed that the state of Indiana requested that Defendants explain their decision to terminate agent networks, which is not consistent with Defendants claim that it was regulators who were poised to change Defendants' standing because of said networks.

50. Each of the misrepresentations of fact set forth in Paragraph 49 above were stated to Clowers by Defendants for the express purpose of inducing Clowers to act toward its detriment by accepting less financial compensation.

51. Defendants' misrepresentations of fact have caused damage to Clowers, as Clowers has received less financial compensation than it is owed, in accordance with Defendants' fabricated data.

52. Aggravating circumstances exist regarding Defendants' conduct warranting the award of additional damages.

COUNT III

PUNITIVE DAMAGES

53. Defendants acted with willful misconduct and fraud, warranting the award of punitive damages, a claim for which is hereby made.

WHEREFORE, Plaintiff Clowers Communications, LLC prays for the following relief:

- a) Trial by jury;
- b) Judgment in its favor and against Defendants Skycom USA, LLC, Terracom, Inc., and Yourtel America, Inc. for Breach of Contract and Fraud;
- c) Damages;
- d) Punitive Damages;
- e) Attorneys' fees and expenses of litigation; and
- f) Such other and further relief as the Court deems proper.

THE MUHAMMAD FIRM LLC

Kenneth Muhammad
Georgia Bar No.: 527907

99 Peachtree Street SW
Suite 201
Atlanta, Georgia 30303
404-618-0910 (Office)
Email: kennethmuhammad@gmx.com

DRAFT



"Kenneth Muhammad" <kennethmuhammad@gmx.com>

Subject: Clowers PROPOSED LETTER - Third of Series of Emails

From: Kenneth Muhammad

To: RWarren@HartzogLaw.com

Cc: Kenneth Muhammad

Bcc: gary@clowerscommunications.com

Date: 01/22/14 02:24 PM

Proposed Letter from Gary Clowers attached.

Kenneth Muhammad
99 Peachtree Street SW
Suite 201
Atlanta, Georgia 30303
404-618-0910

EXHIBIT B-3



"Kenneth Muhammad" <kennethmuhammad@gmx.com>

Subject: Clowers - DOCUMENTS - Fourth of Series of Emails

From: Kenneth Muhammad

To: RWarren@HartzogLaw.com

Cc: Kenneth Muhammad

Date: 01/22/14 02:35 PM

EXHIBIT B-4



"Kenneth Muhammad" <kennethmuhammad@gmx.com>

Subject: Clowers - DOCUMENTS - Fifth in Series of Emails

From: Kenneth Muhammad

To: RWarren@HartzogLaw.com

Cc: Kenneth Muhammad

Date: 01/22/14 02:38 PM

EXHIBIT B-5



"Kenneth Muhammad" <kennethmuhammad@gmx.com>

Subject: RE: Clowers Communications - First of Series of Emails

From: Rick L. Warren

To: 'Kenneth Muhammad'

Date: 01/22/14 05:04 PM

Kenneth,

I received all five of your emails. I am just now opening them as I am out of the office today with what I hope is only a 24 hour stomach virus. I just forwarded these to my client a moment ago. I will let you know our position. Given the volume of data you sent today, a deadline of 3:00 pm tomorrow seems short and a bit unrealistic.

Thank you,

Rick L. Warren

Hartzog Conger Cason & Neville

1600 Bank of Oklahoma Plaza

201 Robert S. Kerr Avenue

Oklahoma City, OK 73102

405-235-7000 Main

405-996-3325 Direct

405-996-3403 Facsimile

rwarren@hartzoglaw.com

www.hartzoglaw.com

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EXHIBIT B-6

From: Kenneth Muhammad [mailto:kennethmuhammad@gmx.com]
Sent: Wednesday, January 22, 2014 1:21 PM
To: Rick L. Warren
Cc: kennethmuhammad@gmx.com
Subject: Clowers Communications - First of Series of Emails

Please see the attached cover letter.

Kenneth Muhammad
99 Peachtree Street SW
Suite 201
Atlanta, Georgia 30303
404-618-0910



"Kenneth Muhammad" <kennethmuhammad@gmx.com>

Subject: RE: Clowers Communications - First of Series of Emails

From: kennethmuhammad

To: RWarren@HartzogLaw.com

Date: 01/22/14 05:56 PM

I will see how long my client will provide and get back to you.

Sent via the Samsung Galaxy S™ III, an AT&T 4G LTE smartphone

Kenneth,

I received all five of your emails. I am just now opening them as I am out of the office today with what I hope is only a 24 hour stomach virus. I just forwarded these to my client a moment ago. I will let you know our position. Given the volume of data you sent today, a deadline of 3:00 pm tomorrow seems short and a bit unrealistic.

Thank you,

Rick L. Warren
Hartzog Conger Cason & Neville
1600 Bank of Oklahoma Plaza
201 Robert S. Kerr Avenue
Oklahoma City, OK 73102
405-235-7000 Main

405-996-3325 Direct
405-996-3403 Facsimile

rwarren@hartzoglaw.com

www.hartzoglaw.com

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EXHIBIT B-7

IRS CIRCULAR 230 NOTICE: Any tax advice in this email was not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties.

From: Kenneth Muhammad [mailto:kennethmuhammad@gmx.com]
Sent: Wednesday, January 22, 2014 1:21 PM
To: Rick L. Warren
Cc: kennethmuhammad@gmx.com
Subject: Clowers Communications - First of Series of Emails

Please see the attached cover letter.

Kenneth Muhammad
99 Peachtree Street SW
Suite 201
Atlanta, Georgia 30303
404-618-0910



"Kenneth Muhammad" <kennethmuhammad@gmx.com>

Subject: RE: Clowers Communications - First of Series of Emails

From: kennethmuhammad

To: RWarren@HartzogLaw.com

Date: 01/22/14 06:04 PM

Friday 1pm is fine.

Sent via the Samsung Galaxy S™ III, an AT&T 4G LTE smartphone

Kenneth,

I received all five of your emails. I am just now opening them as I am out of the office today with what I hope is only a 24 hour stomach virus. I just forwarded these to my client a moment ago. I will let you know our position. Given the volume of data you sent today, a deadline of 3:00 pm tomorrow seems short and a bit unrealistic.

Thank you,

Rick L. Warren

Hartzog Conger Cason & Neville

1600 Bank of Oklahoma Plaza

201 Robert S. Kerr Avenue

Oklahoma City, OK 73102

405-235-7000 Main

405-996-3325 Direct

405-996-3403 Facsimile

rwarren@hartzoglaw.com

www.hartzoglaw.com

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EXHIBIT B-8

IRS CIRCULAR 230 NOTICE: Any tax advice in this email was not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties.

From: Kenneth Muhammad [mailto:kennethmuhammad@gmx.com]
Sent: Wednesday, January 22, 2014 1:21 PM
To: Rick L. Warren
Cc: kennethmuhammad@gmx.com
Subject: Clowers Communications - First of Series of Emails

Please see the attached cover letter.

Kenneth Muhammad
99 Peachtree Street SW
Suite 201
Atlanta, Georgia 30303
404-618-0910



"Kenneth Muhammad" <kennethmuhammad@gmx.com>

Subject: RE: Clowers Communications - First of Series of Emails

From: Rick L. Warren

To: kennethmuhammad

Date: 01/22/14 06:10 PM

Thank you.

Rick L. Warren

Hartzog Conger Cason & Neville

1600 Bank of Oklahoma Plaza

201 Robert S. Kerr Avenue

Oklahoma City, OK 73102

405-235-7000 Main

405-996-3325 Direct

405-996-3403 Facsimile

rwarren@hartzoglaw.com

www.hartzoglaw.com

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From: kennethmuhammad [kennethmuhammad@gmx.com]

Sent: Wednesday, January 22, 2014 5:04 PM

To: Rick L. Warren

Subject: RE: Clowers Communications - First of Series of Emails

Friday 1pm is fine.

Sent via the Samsung Galaxy S™ III, an AT&T 4G LTE smartphone

----- Original message -----

From: "Rick L. Warren" <RWarren@HartzogLaw.com>

Date:

To: 'Kenneth Muhammad' <kennethmuhammad@gmx.com>

Subject: RE: Clowers Communications - First of Series of Emails

EXHIBIT B-9

Kenneth,

I received all five of your emails. I am just now opening them as I am out of the office today with what I hope is only a 24 hour stomach virus. I just forwarded these to my client a moment ago. I will let you know our position. Given the volume of data you sent today, a deadline of 3:00 pm tomorrow seems short and a bit unrealistic.

Thank you,

Rick L. Warren
Hartzog Conger Cason & Neville
1600 Bank of Oklahoma Plaza
201 Robert S. Kerr Avenue
Oklahoma City, OK 73102
405-235-7000 Main
405-996-3325 Direct
405-996-3403 Facsimile
rwarren@hartzoglaw.com
www.hartzoglaw.com

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IRS CIRCULAR 230 NOTICE: Any tax advice in this email was not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties.

From: Kenneth Muhammad [mailto:kennethmuhammad@gmx.com]
Sent: Wednesday, January 22, 2014 1:21 PM
To: Rick L. Warren
Cc: kennethmuhammad@gmx.com
Subject: Clowers Communications - First of Series of Emails

Please see the attached cover letter.

Kenneth Muhammad
99 Peachtree Street SW
Suite 201
Atlanta, Georgia 30303
404-618-0910



"Kenneth Muhammad" <kennethmuhammad@gmx.com>

Subject: RE: Clowers Communications - First of Series of Emails

From: Rick L. Warren

To: 'Kenneth Muhammad'

Date: 01/24/14 11:45 AM

Kenneth,

I just left you a voicemail. I wanted to discuss possible settlement arrangements with you so please call me at your convenience.

Thank you,

Rick L. Warren
Hartzog Conger Cason & Neville
1600 Bank of Oklahoma Plaza
201 Robert S. Kerr Avenue
Oklahoma City, OK 73102
405-235-7000 Main

405-996-3325 Direct
405-996-3403 Facsimile

rwarren@hartzoglaw.com

www.hartzoglaw.com

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EXHIBIT B-10

DOCUMENT COMPATIBILITY DOWNLOAD: If you are unable to open the attached Microsoft Word document, please click on the provided link to download the [Microsoft Compatibility Pack](#). Word 2000, Word XP and Word 2003 require that this compatibility pack be installed prior to opening a Word 2007 or 2010 document.

From: Kenneth Muhammad [mailto:kennethmuhammad@gmx.com]
Sent: Wednesday, January 22, 2014 1:21 PM
To: Rick L. Warren
Cc: kennethmuhammad@gmx.com
Subject: Clowers Communications - First of Series of Emails

Please see the attached cover letter.

Kenneth Muhammad
99 Peachtree Street SW
Suite 201
Atlanta, Georgia 30303
404-618-0910



"Kenneth Muhammad" <kennethmuhammad@gmx.com>

Subject: Clowers v. Skycom
From: Kenneth Muhammad
To: RWarren@HartzogLaw.com
Date: 01/28/14 04:53 PM

Rick,

We are taking your client's silence as a negative response. If this is not correct, I need something to tell my client asap.

Kenneth Muhammad
99 Peachtree Street SW
Suite 201
Atlanta, Georgia 30303

EXHIBIT B-11



"Kenneth Muhammad" <kennethmuhammad@gmx.com>

Subject: Automatic reply: Clowers v. Skycom

From: Rick L. Warren

To: Kenneth Muhammad

Date: 01/28/14 04:53 PM

I am out of the office and will return on Monday, Monday, February 3, 2014. If you need immediate assistance, contact my assistant, Cheryl McDaniel, at 405-235-7000.

Thanks,

Rick L. Warren
Hartzog Conger Cason & Neville
1600 Bank of Oklahoma Plaza
201 Robert S. Kerr Avenue
Oklahoma City, Oklahoma 73102
405-235-7000

405-996-3325 Direct Dial
405-996-3403 facsimile
rwarren@hartzoglaw.com
www.hartzoglaw.com

EXHIBIT B-12

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CLOWERS COMMUNICATIONS, LLC	:	
a Georgia Limited Liability Company,	:	
	:	Case No.: 1 14-CV-0291
Plaintiff	:	
	:	
v.	:	
	:	
SKYCOM USA, LLC, an	:	
Oklahoma Limited Liability Company;	:	
TERRACOM, INC., an Oklahoma Corp.; and	:	
YOURTEL AMERICA, INC., a Missouri Corp.,	:	
	:	
Defendants.	:	

**PLAINTIFF’S RESPONSE TO
DEFENDANT’S MOTION TO STAY**

Plaintiff, Clowers Communications, LLC (hereinafter “Clowers Communications”), hereby submits this Response to Defendant’s Motion to Stay, and states:

Introduction

Defendants’ Motion to Stay contains direct misrepresentations to this Court. As a result, Plaintiff has filed a Motion for Sanctions under Rule 11 contemporaneously with this response.

Defendants have intentionally sought to mislead this Court into believing that Defendants filed a valid and legitimate lawsuit in Oklahoma, then Plaintiffs “retaliated” by filing the present action in the Northern District of Georgia. In

reality, the attorneys in this case did not communicate with one another for months. Then, Plaintiffs forwarded a draft Northern District of Georgia complaint to Defendants, along with a request that they do the following before the lawsuit would be filed on Thursday, January 23, 2014 at 3:00 p.m.: 1) agree to enter into settlement negotiations, and 2) prior to beginning settlement discussions – they acknowledge that Defendants owe money to Plaintiff. Defendants were given a written extension of the deadline, per their request, to Friday, January 24, 2014 at 1:00 p.m.

Defendants accepted Plaintiffs terms one-hour and fifteen minutes before the deadline on Friday, January 24, 2014 at or around 11:45 a.m. Defendants acknowledged that they wanted to enter into settlement negotiations and those negotiations would begin with an acknowledgement that some unspecified sum of money would be paid to Plaintiffs. Defendants then filed a lawsuit in Oklahoma the next business day, unknown to Plaintiffs at the time. The Oklahoma lawsuit claims that Plaintiff owes Defendants money for failing to return unused wireless phones. In reality, Plaintiff's counsel already forwarded to defense counsel delivery confirmation that the phones in dispute were returned, with the exception of a small fraction. The Oklahoma lawsuit also claims that Plaintiff disparaged Defendants by posting a website about Defendants. In reality, Plaintiff has no connection with any such website.

Plaintiff filed this Northern District of Georgia lawsuit against Defendants alleging fraud. Defendants engaged in fraudulent accounting practices designed to pay Plaintiff less money than they actually owed. The money was to be paid under a federal program operated by the Federal Communications Commission. Defendants have compounded their fraudulent activity by filing a meritless lawsuit in Oklahoma for the sole purpose of positioning themselves to say to this Court and FCC investigators that Plaintiff filed suit in “retaliation.” This is an outright misrepresentation of fact, and sanctions should be imposed by this Court.

Facts

In the summer and fall of 2013, Defendants Skycom USA, LLC (“Skycom”), Terracom, Inc. (“Terracom”), and Yourtel America, Inc. (“Yourtel”) refused to pay Plaintiff, Clowers Communications, LLC (“Clowers Communications”) money owed under the parties’ contract (the “Merchant Agreement”). (Muhammad Aff. ¶¶ 3-4 (Ex. B), Clowers Aff. ¶¶ 19-22 (Ex. A)) They responded to Plaintiff’s request for payment with a demand for payment of their own, claiming that Plaintiff failed to return 8,445 Terracom phones and 1386 Yourtel phones. (Id.)

Plaintiff’s counsel forwarded to Defendants a spreadsheet with UPS and Fedex tracking numbers for returned phones. (Id.) Accompanying this brief, Plaintiffs have included an exhaustive spreadsheet showing that all of the alleged

unreturned phones have been returned, with the exception of about 300 phones. (Clowers Aff. ¶ 22 (Ex. A))

Defendants ignored Plaintiff's proof of phone delivery and did not pay the amounts owed. (Muhammad Aff. ¶ 5 (Ex. B)) For several months, there was no communication between the attorneys involved in the settlement effort. (Id.)

On January 22, 2014, communications commenced once again when Plaintiff's counsel, Kenneth Muhammad, sent five (5) emails to Defendants' counsel, Rick Warren. (Muhammad Aff. ¶ 6 (Ex. B)) The first email contained a cover letter informing Rick Warren that Clowers Communications would be filing a Complaint in the Northern District of Georgia on January 23, 2014 at 3:00 p.m. unless Skycom, Terracom, and Yourtel acknowledged that they owed money to Clowers Communications, and they were prepared to enter into settlement negotiations. (Id. at ¶ 6)

The second email contained a draft copy of the Northern District of Georgia Complaint. (Id. at ¶ 7) The third email contained a draft letter prepared by Gary Clowers, owner of Clowers Communications, informing federal regulators of the true nature of the parties' dispute. (Id. at ¶ 8) The fourth and fifth emails contained documents proving that Skycom, Terracom, and Yourtel owe money to Clowers Communications, that fraud and deceit were used in their accounting

practices, and that Clowers Communications returned the disputed unused phones already. (Id. at ¶ 9)

The same day, January 22, 2014 at 5:04 p.m., Rick Warren replied with an email stating:

“I received all five of your emails. I am just now opening them as I am out of the office today with what I hope is only a 24 hour stomach virus. I just forwarded these to my client a moment ago. I will let you know our position. Given the volume of data you sent today, a deadline of 3:00 pm tomorrow seems short and a bit unrealistic.”

(Id. at ¶ 10)

At 5:56 p.m., Kenneth Muhammad replied via email, stating: “I will see how long my client will provide and get back to you.” (Id. at ¶ 11)

At 6:04 p.m., Kenneth Muhammad sent another email, stating: “Friday 1pm is fine.” (Id. at ¶ 12) This meant that Skycom, Terracom, and Yourtel were given an extension until Friday at 1:00 p.m., per Rick Warren’s request, to say that a) they acknowledged that they owed money to Clowers Communications, and b) they wanted to enter into good faith settlement negotiations to avoid the Northern District of Georgia Complaint that was forwarded to them from being filed on Friday, January 24, 2014. (Id. at ¶ 12)

At 6:10 p.m., Rick Warren replied via email, stating: “Thank you.” (Id. at ¶ 13)

One hour and fifteen minutes before the deadline, on Friday, January 24, 2014 at 11:45 a.m., Rick Warren sent an email to Kenneth Muhammad stating: “Kenneth, I just left you a voicemail. I wanted to discuss possible settlement arrangements with you so please call me at your convenience.” (Id. at ¶ 14)

Shortly thereafter, Kenneth Muhammad, counsel for Clowers Communications, spoke to Rick Warren over the telephone and Mr. Warren accepted the conditions set forth in the January 22, 2014 correspondence. He stated that his client wanted to accept Clowers Communications’ offer to enter into good faith settlement discussions to avoid the filing of the Complaint that was sent to him, and that they acknowledged that money would be paid to Clowers Communications. (Id. at ¶ 15) He said that they could not begin speculating as to the amount of the payment to Clowers Communications because Skycom, Terracom, and Yourtel may not be paid by the federal government for activities in Arizona and possibly some other States. (Id. at ¶ 15) He said if the government’s refusal to pay could be linked to Clowers Communications, they would want to offset the amount of the final payment. (Id. at ¶ 15) As a result, they wanted to begin settlement discussions, avoid the filing of the Northern District of Georgia Complaint, and figure out the exact amount to be paid to Clowers Communications when he returned from vacation (which he was leaving for the next week). (Id. at ¶ 15)

Kenneth Muhammad spoke to his client, Gary Clowers, then called Rick Warren again. (Id. at ¶ 16) Kenneth Muhammad told Mr. Warren that Clowers Communications would not file the Northern District of Georgia lawsuit at that time based upon his representations. (Id. at ¶ 16) However, he said that Gary Clowers did not want to wait a week or two for Mr. Warren to complete his vacation before settlement talks began. (Id.) Rick Warren said that his clients had a team reviewing Clowers Communications' documents and trying to assess a fair settlement amount and he was not sure how long they would take. (Id.)

On Monday, January 27, 2014 and Tuesday, January 28, 2014, Kenneth Muhammad made several telephone calls to Mr. Warren that were not returned. (Id. at ¶ 17) These calls were made to find out if Skycom, Terracom, and Yourtel were going to acknowledge that the amount that they owed to Clowers Communications was at or near the amounts that Clowers Communications believed they were owed. (Id. at 17)

On Tuesday, January 28, 2014 at 4:53 p.m., Kenneth Muhammad sent an email to Rick Warren stating: "Rick, We are taking your client's silence as a negative response. If this is not correct, I need something to tell my client asap." (Id. at ¶ 18) An automatic reply email came from Rick Warren's email account stating: "I am out of the office and will return on Monday, Monday, February 3,

2014. If you need immediate assistance, contact my assistant, Cheryl McDaniel, at 405-235-7000.” (Id. at ¶ 19)

The next day, Kenneth Muhammad spoke to Rick Warren on the telephone. (Id. at ¶ 20) Mr. Warren said that he was out of the office on vacation. (Id. at ¶ 20) He said that since Gary Clowers did not want to wait for him to return from vacation before filing his lawsuit, they had no choice but to file a lawsuit in Oklahoma because their “backs were against the wall.” (Id. at ¶ 20)

Rick Warren made it clear that the Oklahoma lawsuit was filed before Skycom, Terracom, or Yourtel reviewed Clowers Communications’ UPS and Fedex tracking numbers and documentation proving that the disputed unused wireless phones were returned. (Id. at ¶ 21) Counsel for Clowers Communications later found out that the Oklahoma lawsuit also claims that Clowers Communications made a website disparaging Skycom, Terracom, and Yourtel, when neither Gary Clowers nor Clowers Communications have anything to do with any such websites. (Id. at 21)

When Rick Warren told Kenneth Muhammad that he filed a lawsuit in Oklahoma, Kenneth Muhammad was not provided a copy of the Oklahoma lawsuit. (Id. at ¶ 22) Neither Gary Clowers nor Kenneth Muhammad saw any documentation associated with an Oklahoma lawsuit until the day that Skycom,

Terracom, and Yourtel filed their Motion to Stay in this Court on March 21, 2014. (Id. at ¶ 23)

As of the time that the Motion to Stay was filed, Clowers Communications was not served with any Oklahoma summons or complaint, and Oklahoma did not retain jurisdiction over Gary Clowers or Clowers Communications. (Id. at ¶ 24)

Defendants have been served with the summons and complaint in the present Northern District of Georgia case. (Id. at ¶ 25)

The Oklahoma lawsuit filed by Skycom, Terracom, and Yourtel does not appear to contain any viable claims against Clowers Communications or Gary Clowers. (Id. at ¶ 26) Clowers Communications returned phones that Defendants claim are unreturned (and provided proof of delivery), and there is no evidence that Gary Clowers has any connection with any websites concerning the Defendants. (Id. at ¶ 26) Skycom, Terracom, and Yourtel also accused Gary Clowers of tortiously interfering with their business relationship with governmental agencies (the FCC, USAC, and IURC) by reporting conduct to said agencies. (Id.) This claim does not appear to be viable as a matter of law or fact. (Id.)

All of the facts and allegations at issue in this lawsuit involve client accounts, witnesses, and activities in the states of Arizona, Arkansas, Illinois, Indiana, Kansas, Louisiana, Maryland, Minnesota, Missouri, Nevada, Oklahoma, Pennsylvania, Texas, West Virginia, and Wisconsin. (Clowers Aff. at ¶¶ 8-10) Of

the 126,000 customers that Clowers Communications obtained, whose accounts will be at issue in this case, only approximately 100 customers were in the state of Oklahoma. (Id. at ¶ 12) All Clowers Communication customer information and shipping decisions, including acquisition of shipping labels, was done at Clowers Communications principal office in the state of Georgia. (Id. at ¶¶ 17-18)

All of the activity at issue in this case is regulated by the federal government through the FCC and USAC. (Id. at ¶ 15) It is also believed that federal regulators' investigation of Defendants will be an issue in this case.

Argument and Citation of Authority

In their brief in support of the Motion to Stay, the Defendants cited *Moorer v. Demopolis Waterworks & Sewer Bd.*, 374 F.3d 994, 997-98 (11th Cir. 2004) and *Ambrosia Coal & Constr. Co. v. Pages Morales*, 368 F.3d 1320, 1330 (11th Cir. 2004) to establish seven factors to be taken into consideration when determining whether to defer to the alleged parallel state-court proceeding: (1) the order in which the courts assumed jurisdiction over property; (2) the relative inconvenience of the fora; (3) the need to avoid piecemeal litigation; (4) the order in which the courts obtained jurisdiction and the relative progress of the cases; (5) whether state or federal law will be applied; (6) whether the state court will adequately protect the rights of the parties; and (7) the vexatious or reactive nature of the federal

litigation. All of these factors weigh heavily in favor of this case proceeding in this Court, without a stay in proceedings.

Jurisdiction Over Property

Jurisdiction over property is not likely to be a factor in this case.

Inconvenience of the Fora

The issues in dispute in this case are: 1) how many customers did Clowers Communications bring to Defendants, 2) how long did those customers' wireless phone accounts remain active, 3) has Clowers Communications been paid for all customers through the duration of their status as active customers, 4) whether Defendants intentionally manipulated data to give the appearance that Clowers Communications is owed less than what was actually owed, 5) how many unused wireless phones did Clowers Communications fail to return to Defendants, 6) did Clowers Communications set up a malicious website against Defendants, and 7) whether reporting the parties dispute to federal regulators can be deemed tortious interference with Defendants "business relationship" with government agencies.

All of the evidence related to these issues is in the states where the customers were actually acquired, which includes 15 states throughout the country, or at Clowers Communications office in Georgia. (See Clowers Affidavit Generally) Evidence related to Clowers Communications setting up, or not setting up, a malicious website would be in Georgia where Gary Clowers is located.

Evidence related to the return of wireless phones is at Clowers Communications Georgia office, or with field agents in states throughout the country. Evidence related to customer activations originates in the state where the customer is located. That information was sent to Clowers Communications office in Georgia. (Id. at ¶ 17) Only approximately 100 out of 126,000 customers were in Oklahoma. (Id. at ¶¶ 11-12) The only evidence that is exclusively in Oklahoma is the few people that served as Clowers Communications' contacts with Defendants – nothing else.

This is a case involving multiple states, and customers spread through the United States. The case involves a federal program, the Lifeline wireless phone program. It is appropriate for this case to be resolved in federal court.

Need to Avoid Piecemeal Litigation

Defendants' Oklahoma lawsuit has no viable claims. Defendants claim in their lawsuit that wireless phones were not returned, while the UPS and Fedex tracking numbers for the shipments are evidence in this case – and were provided to Defendants before their Oklahoma suit was filed. They claim Gary Clowers set up a malicious website, when there is no evidence of this. The website seems to have been posted before Gary Clowers began working with Defendants. Defendants have no evidence linking Gary Clowers to any websites. Their Oklahoma lawsuit claims that Gary Clowers tortuously interfered with a business

relationship. However, they cite federal regulators as the parties with which they had the business relationship. Their claims in Oklahoma lack merit.

Further, Defendants filed the Oklahoma lawsuit for the sole purpose of making a false representation to this Court and federal regulators. When compared with the affidavit (with attachments) of Kenneth Muhammad, it is clear that the affidavit of Rick Warren contains deliberate misrepresentations to this Court regarding how the Oklahoma case was filed.

Order in Which Courts Obtained Jurisdiction

Yourtel and Terracom were served with this Northern District action on March 21, 2014. Skycom and Terracom were previously served with this case on February 28, 2014 but the process server left the summons and complaint at that time with people claiming to be authorized to receive documents on behalf of the registered agents. Plaintiff decided to have all documents re-served out of an abundance of caution. While this Court retained jurisdiction over Defendants by March 21, 2014 at the latest, Oklahoma did not have jurisdiction over Clowers Communications or Gary Clowers at the time since they remained un-served.

Whether State or Federal Law will be Applied

State law claims have been alleged, but those claims concern a federal program administered and closely regulated by federal agencies who have been made aware of, and are following, this litigation.

Whether the State Court Will Adequately Protect the Rights of the Parties

Plaintiff is not aware of issues related to this factor at this time.

The Vexatious or Reactive Nature of the Federal Litigation

Kenneth Muhammad, counsel for Clowers Communications, has attached several exhibits to his affidavit. The exhibits show, without question, that the affidavit of Rick Warren and the entire argument set forth by Defendants concerning how the filing of the Oklahoma lawsuit came about, are all deliberate misrepresentations. The exhibits accompanying the affidavit of Kenneth Muhammad show that Clowers Communications was to file its lawsuit on January 23, 2014 at 3:00 p.m. (Muhammad Aff. at ¶ 6 (Ex. B)) The lawsuit was not filed at the time due to the nature of the exchange between Kenneth Muhammad and Rick Warren. It is now clear that Rick Warren intentionally misrepresented his clients' position regarding settlement to give him time to put together a meritless Oklahoma state court case so that Defendants could say that they filed first. This deliberate misconduct alone warrants denial of Defendants' motion.

WHEREFORE, Plaintiff respectfully requests that this Court deny Defendants' Motion to Stay.

Respectfully submitted,

/s/ Kenneth Muhammad
Kenneth Muhammad
Georgia Bar # 527907

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Atlanta, Georgia 31131
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Fax: 404-267-1822
kennethmuhammad@gmx.com

Certificate of Font Size

In accordance with LR 7.1 (D), NDGa, I hereby certify that this brief was prepared using 14-point Times New Roman Font.

/s/ Kenneth Muhammad

Kenneth Muhammad
Georgia Bar # 527907

Certificate of Service

I hereby certify that on April 2, 2014, I electronically transmitted the attached document to the clerk of Court using the ECF System for filing, which forwards a copy to the following ECF registrants:

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STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA UTILITY)
REGULATORY COMMISSION'S INVESTIGATION)
OF TERRACOM, INC. AND ITS COMPLIANCE) CAUSE NO. 44332
WITH THE ORDERS OF THIS COMMISSION)

RESPONSE TO TENDERED EX PARTE COMMUNICATION

TerraCom, Inc. ("TerraCom"), by counsel, pursuant to 170 IAC 1-1.5-6(b), hereby responds to the ex parte communication tendered to the record of this proceeding via a Docket Entry dated March 28, 2014 (the "Communication"), and states:

1. The author of the Communication is Gary Clowers, a disgruntled former TerraCom sales agent.
2. Mr. Clowers was the author of the ex parte communication tendered to the record of this proceeding on or about March 11, 2014. On information and belief, Mr. Clowers also sent via email three (3) prior ex parte communications to the Commission from the address whistlerblowerterracom@hotmail.com that were tendered to the record of this proceeding on October 22, 2013 and December 31, 2013.
3. On or about January 27, 2014, TerraCom and its affiliates filed a lawsuit against Mr. Clowers and Clowers Communications, LLC in the District Court of Oklahoma County for breach of contract, libel, and tortious interference with TerraCom's business relationships, seeking damages in excess of \$245,000 (the "TerraCom Lawsuit").
4. Four days later, Mr. Clowers filed a federal lawsuit against TerraCom and its affiliates in the Northern District of Georgia.
5. As is evidenced by Exhibit A/Exhibit 2 attached hereto, counsel for Mr. Clowers is aware of the TerraCom Lawsuit. To date, a professional process server has made at least

seven (7) attempts to serve Mr. Clowers at his business or home addresses with the petition initiating the TerraCom Lawsuit, and Mr. Clowers has evaded service of process in all instances.

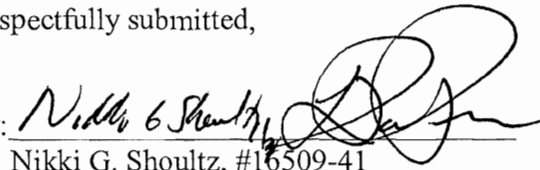
6. TerraCom disputes the allegations in the Communication regarding amounts owed by the respective parties, which is the subject of the two pending lawsuits.

7. While the Communication must be tendered to the record in accordance with 170 IAC 1-1.5-6(a)(1)(A), TerraCom objects to the admission of the Communication to the evidentiary record of this proceeding.

8. In order to maintain a fair and impartial proceeding in accordance with 170 IAC 1-1.5-6(c), TerraCom objects to any reliance by the Commission on the Communication.

Respectfully submitted,


By:


Nikki G. Shoultz, #16509-41
L. Parvin Price, #5827-14
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204
(317) 684-5000

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been served electronically upon the following counsel of record this 31st day of March, 2014:

Karol H. Krohn, Esq.
Office of Utility Consumer Counselor
PNC Center, Suite 1500 South
115 West Washington Street
Indianapolis, IN 46204
kkrohn@oucc.in.gov


L. Parvin Price, #5827-14

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CLOWERS COMMUNICATIONS,)
LLC, a Georgia Limited Liability)
Company,)

Plaintiff,)

v.)

Civil Action No.
14-CV-0291-ODE

SKYCOM USA, LLC, an Oklahoma)
Limited Liability Company;)
TERRACOM, INC., an Oklahoma)
Corporation; and)
YOURTEL AMERICA, INC.,)
a Missouri Corporation,)

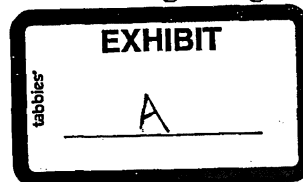
Defendants.)

AFFIDAVIT OF RICK WARREN

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

The undersigned, Rick Warren, being first duly sworn, and upon my oath, state the following:

1. My name is Rick Warren. I am a resident of Norman, Oklahoma. I am over the age of 21 years and have never been convicted of a felony. I have continuously been engaged in the practice of law for the past eight years. I am currently a partner of the law firm Hartzog Conger Cason & Neville, which is



located in Oklahoma City, Oklahoma. All statements herein are based on my personal knowledge.

2. Since August 2013, I have represented Skycom USA, LLC; Terracom, Inc.; and Yourtel America, Inc. (collectively, the Companies), in their dispute with Clowers Communications and its principal owner, Gary A. Clowers, concerning the parties' rights and obligations under the Terracom-Yourtel America Merchant Agreement.

3. Since August 2013, the parties have been negotiating a potential resolution of their dispute.

4. In late October–early November 2013, the Companies prepared a Petition against Clowers and Clowers Communications. The Companies did not file the Petition at that time.

5. On January 27, 2014, the Companies filed their Petition in Oklahoma state court.

6. On January 28, 2014, I contacted Kenneth Muhammad, counsel for Clowers and Clowers Communications. I informed Mr. Muhammad that the Companies had filed suit in Oklahoma but were willing to wait to serve process if his clients wanted to continue the parties' settlement discussions.

7. Mr. Muhammad responded that his clients would likely be angry and would probably file a lawsuit in Georgia federal court.

8. I told Mr. Muhammad that if his clients decided to sue the Companies in Georgia, I would be willing to accept service on behalf of the Companies in the later-filed Georgia action if Mr. Muhammad would accept service on behalf of his clients in the earlier-filed Oklahoma action.

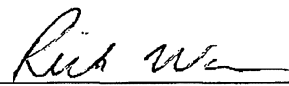
9. Mr. Muhammad advised me that he would speak with his clients and get back in touch with me.

10. Mr. Muhammad did not contact me again.

11. On January 31, 2014, Clowers Communications filed its Complaint in this Court.

FURTHER AFFIANT SAITH NOT.

Dated this 17th day of March, 2014.


Rick Warren